Naturalization
Syllabus-Digest
OF
Decisions

SEPTEMBER, 1906
TO
AUGUST, 1913

SYLLABUS-DIGEST

OF

DECISIONS

UNDER THE

LAW OF NATURALIZATION

OF THE

UNITED STATES

SEPTEMBER, 1906

TO

AUGUST, 1913

BY

JEROME C. SHEAR

CHIEF UNITED STATES NATURALIZATION EXAMINER

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PREFACE

The purpose of this digest is to afford a means of quick reference to decisions in naturalization law. The descriptive-word method has been employed, and the subjects are alphabetically arranged throughout.

The digest includes reported decisions by the federal courts and the courts of last resort in the different States from the ct of June 29, 1906, became effective / prior decisions have been included vered or made sufficiently clear by ng that period.

J. C. S.

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AGE OF PETITIONER FOR NATURALIZATION.

Certificate of naturalization cannot issue to a minor.

There is nothing in the statute (naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 [U. S. Comp. St. Supp. 1907, p. 420]) specifying any requirements as to age, but it has been universally held that final papers cannot be given to an alien applicant who has not reached his majority.

Dicta In re Gross, 160 Fed., 739. (District Court, E. D. New York, February 17, 1908.)

Petition for naturalization may be filed by a minor.

Under the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), an infant who makes declaration of his intention to become a citizen of the United States after reaching the age of eighteen years, may petition for naturalization two years after the date of such declaration of intention, although he is a minor at the time the petition is filed.

In re Rousos, 119 N. Y. Supp., 34. (Supreme Court, Special Term, Monroe County. September 28, 1909.)

ALLEGIANCE.

Declaration of intention does not require renunciation of allegiance.

Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, page 1329), providing that aliens shall make declaration of their intention to become citizens of the United States two years at least before applying for naturalization, does not require a renunciation of allegiance to the foreign sovereign, or the actual declaration of allegiance to the United States, at the time the declaration of intention is made.

In re Symanowsski, 168 Fed., 978. (Circuit Court, N. D. Illinois, E. D. March 29, 1909.)

AMENDMENT.

Court Record—Evidence.

A record of naturalization cannot be corrected to show that the name of the person naturalized was other than that set forth therein in the absence of any entry or memorandum among the files of the court or in the office of the clerk by which the record can be corrected; and a certificate purporting to be a copy of the naturalization record, under the seal of the court and signed by the clerk, filed in support of the application but which is not sustained by the record, is a nullity and cannot be used to correct the record.

In re O'Sullivan, 117 S. W., 651. (St. Louis Court of Appeals. Missouri. March 23, 1909.)

Declaration of intention containing name of wrong country and sovereign—Clerical error.

A declaration of intention to become a citizen of the United States made under the provisions of the Act of Congress of June 29, 1906, Sec. 4, Subd. 1, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 528), which avers the place of birth of the declarant to have been Eisenberg, Germany, and that he intends to forever renounce allegiance particularly to "William II, Emperor of Germany, of which I am a subject," when in fact he was born in Eisenberg, Austria-Hungary, and was at the time of his attempted declaration a subject of the sov-

ereign of that country, is void and not susceptible of amendment; and the hardship resulting to the declarant cannot be relieved against merely because it may appear that the error is clerical, and not his own.

In re Friedl, 202 Fed., 301. (District Court, E. D. Wisconsin. January 11, 1913.)

Same.

A declaration of intention to become a citizen of the United States which sets forth that the declarant is a native of France and intends to renounce allegiance, etc., to the Republic of France, when, in fact, he was a native of Russia and a subject of the Czar of Russia, is void.[1]

In re Lewkowicz, 169 Fred., 927. (District Court, S. D. New York. April 28, 1909.)

Declaration of intention—Failure to renounce allegiance particularly, by name, etc.

A declaration of intention to become a citizen of the United States made under Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St., 1901, p. 1327), which contains a general renunciation of allegiance, but fails to renounce allegiance particularly, by name, to the prince, etc., to whom the declarant owes allegiance, is vitally defective and cannot be amended.

In re Stack, 200 Fed., 330. (District Court, W. D. Missouri, W. D. October 2, 1912.)

Declaration of intention filed in fictitious or assumed name.

The naturalization act of June 29, 1906, c. 3592, Sec. 6, 34 Stat. 598 (U. S. Comp. St. Supp., 1911, p. 532), empowers the court to make a decree changing the name of an alien

at the time of his admission to citizenship. The Penal Law (Act March 4, 1909, c. 321, 35 Stat. 1102 [U. S. Comp. St. Supp. 1911, p. 1611]), makes it an offense for anyone to apply for naturalization in a fictitious or assumed name. *Held,* that where an alien made declaration of his intention in the name of Isaac Boorvis, and afterwards filed a petition to be made a citizen under his real name of Isaac Brody, he could not be allowed to amend the declaration of intention, but must file a new one in his right name.

In re Boorvis, 205 Fed., 401. (District Court, S. D. New York. May 5, 1913.)

Declaration of intention not a judicial instrument—Cannot be amended nunc pro tunc.

The filing of a declaration of intention is not a judicial proceeding, nor is a declaration of intention a judicial instrument, and it cannot be amended *nunc pro tunc.*

In re Stack, 200 Fed., 330. (District Court, W. D. Missouri, W. D. October 2, 1912.)

Judgments—Attack.

A decree granting naturalization is like any other judgment of the court, and cannot be corrected at a subsequent term, nor attacked except in the manner and for the causes for which judgments of a court of record may be assailed.

In re O'Sullivan, 117 S. W., 651. (St. Louis Court of Appeals. Missouri. March 23, 1909.)

Same—Proceedings may be amended nunc pro tunc—Directory provisions of statute.

The act of June 29, 1906, c. 3592, Sec. 9, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), provides that every

final order which shall be made upon a petition for naturalization shall be under the hand of the court and entered in full upon a record kept for that purpose, and Section 18 makes it a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this act, except upon a final order under the hand of a court having jurisdiction to make such order. *Held*, that where a court rendered a judgment admitting an alien to citizenship, and the clerk of the court issued a certificate of naturalization before the judgment had been entered and signed, the proceeding is not void, but may be amended *nunc pro tunc*, the provisions of the statute being only directory.

U. S. v. Stoller, 180 Fed., 910. (District Court, E. D. Washington, E. D. July 8, 1910.)

Same—Change of name after naturalization—Jurisdiction.

Where an alien duly naturalized as a citizen of the United States in 1898 in the name of Frederick Persky, subsequently had his name changed to Perkins by order of the state court, a federal court, in which the judgment of naturalization was entered, has no jurisdiction to alter the judgment to show that the name of the applicant for citizenship was Perkins instead of Persky.

In re Perkins, 204 Fed., 350. (District Court, S. D. New York. April 16, 1913.)

Petition to cancel certificate of naturalization—Affidavit.

Where a judgment of the lower court overruling a demurrer to a petition for cancellation of a certificate of citizenship, and to vacate the order admitting the respondent to citizenship, was reversed on the ground that the petition

was not supported by affidavit, the cause was remanded by this court, with direction to the lower court to sustain the demurrer, and unless the petition might be amended to show the existence of a proper affidavit at the time it was filed, to dismiss the petition without prejudice.

Cohen v. U. S., 38 App. D. C. 123

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[1] The court said: "The declaration as drawn was a complete and intelligible document. It may not have been true—I do not think it was true—but such as it was it contained no clerical error, and it is going much too far to ask any court to correct the error of the applicant or his interpreter, and thus to manufacture an entirely new paper."

APPEAL.

State courts act quoad hoc as United States courts.

The right of appeal exists in a naturalization proceeding. In entertaining such proceedings the Supreme Court acts *quoad hoc* as a court of the United States.

U. S. vs. Breen, 120 N. Y. Supp., 304. (Supreme Court, Appellate Division, Second Department. December 30, 1909.)

Naturalization not being a judicial, but a political act, such proceedings are not subject to review.

The admission of aliens to citizenship is not a judicial, but a political act, is not necessarily a business of the courts, and may be lodged by Congress in an executive department of the government, but the courts having been vested with the power to grant citizenship on proof to the satisfaction of the court, the exercise of that power is discretionary and not subject to review.

U. S. v. Dolla, 177 Fed., 101. (Circuit Court of Appeals, Fifth Circuit. March 1, 1910.)

Decisions in naturalization proceedings not reviewable.

A proceeding for naturalization under the act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909,

p. 478), does not constitute a "case" within the meaning of section 6 of the Circuit Courts of Appeals Act of March 3, 1891, c. 517, 26 Stat. 827, 828 (U. S. Comp. St. 1901, p. 549), providing that the Circuit Courts of Appeals established by this act shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the District Courts and existing Circuit Courts in all cases other than those provided for in the fifth section unless otherwise provided by law, and as the naturalization act does not provide for a direct appeal the Circuit Court of Appeals is without jurisdiction to review decisions in such proceedings.

U. S. v. Dolla, 177 Fed., 101. (Circuit Court of Appeals, Fifth Circuit. March 1, 1910.)

Discretion, abuse of.

Under the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), providing that it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, the fitness of aliens to be admitted as citizens of the United States is within the discretion of the court, but such discretion must be a sound judicial discretion and if abused is subject to review.

U. S. v. Hrasky, 88 N. E., 1031, 240 Ill., 560. (Supreme Court of Illinois. April, 1909.)

Judgments not void if erroneous—How set aside—Cannot be collaterally attacked.

The judgment of a court of competent jurisdiction admitting an alien to citizenship, even if erroneous, is not void, cannot be collaterally attacked and can only be set aside by appeal or writ of error taken for that very purpose.

State ex rel. Lacy, et al. v. Brandhorst, 56 S. W. 1094 (Supreme Court of Missouri, Division No. 2, May 21, 1900.)

Construction of state laws by state court—Jurisdiction of federal courts concurrent, not revisory.

A state court having reached a conclusion adverse to the government and favorable to its jurisdiction of a petition for naturalization, and admitted the petitioner to citizenship, and no steps were taken for a review by the Superior Court of the state, which alone could authoritatively construe the local law on which the jurisdiction depended, a federal district court will not cancel the certificate so issued in a proceeding by the government, such court having concurrent and not revisory jurisdiction.

U. S. v. Anderson, 169 Fed. 201. (District Court, D. Idaho, C. D. April 1, 1909.)

CANCELLATION.

Power of Congress to authorize.

Art. 1, Sec. 8, of the United States Constitution gives Congress the power to authorize a direct attack upon certificates of citizenship in an independent proceeding such as is authorized in Sec. 15 of the act of June 29, 1906, 34 Stat., 596, 601, c. 3592.

Johannessen v. United States, 32 S. Ct., 613, 225 U. S. 227, 56 L. Ed., 1066. (No. 230. Submitted April 22, 1912.—Decided May 27, 1912.)

Constitutionality—Certificate of naturalization granted by another court.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1907, p. 427), providing for the cancellation of certificates of naturalization for fraud, and conferring authority on one court to set aside the order or decree of another court, is not unconstitutional.

U. S. v. Mansour, 170 Fed., 671. (District Court, S. D. New York. August 18, 1908.)

Same.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1907, p. 427), authorizing the can-

cellation of certificates of naturalization for fraud or illegality, although granted by another court, is constitutional.

U. S. v. Simon, 170 Fed., 680. (Circuit Court, D. Massachusetts. May 25, 1909.)

Same.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), providing for the cancellation of certificates of naturalization procured illegally or by fraud, is not unconstitutional because it gives to one court the power to annul the judgment of another court of co-ordinate jurisdiction.

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Same—Residence.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), which authorizes a suit by the United States to cancel a certificate of naturalization on the ground of fraud or that it was illegally procured, is constitutional, and the United States may maintain a suit thereunder in a federal court to cancel a certificate issued by the state court under that act or former statutes, on the ground of fraud, in that the allegation and evidence that the applicant had resided in the United States for five years was untrue.

U. S. v. Spohrer, 175 Fed., 440. (Circuit Court, D. New Jersey. January 14, 1910.)

Mode of review—Legislative discretion.

The mode of judicial review of a certificate of naturalization rests in legislative discretion.

Johannessen v. United States, 32 S. Ct., 613, 225 U. S., 227, 56 L. Ed., 1066. (No. 230. Submitted April 22, 1912.—Decided May 27, 1912.)

Retrospective provisions of law—Vested rights—Penalty.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), is retrospective in so far as it applies to certificates of naturalization granted prior to its passage, but is not therefore void as depriving the person naturalized of vested rights, or subjecting him to a penalty, since the Constitution contemplates that only those who intend to become permanent residents shall be naturalized or retain their citizenship, section I of the fourteenth amendment providing that "All persons born or naturalized in the United States and *subject to the jurisdiction thereof* are citizens of the United States and of the states wherein they reside."

U. S. v. Ellis, 185 Fed., 546. (Circuit Court, E. D. Louisiana, New Orleans Division. March 3, 1911.)

Law is not ex post facto—Fraud.

An alien has no moral nor constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced on the court, and an act providing for the cancellation of certificates of naturalization imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct, but simply deprives him of his

ill-gotten privileges, and is not an *ex post facto* law within the prohibition of Art. I, Sec. 9, of the Constitution.

Johannessen v. United States, 32 S. Ct., 613, 225 U. S. 227, 56 L. Ed., 1066. (No. 230. Submitted April 22, 1912.—Decided May 27, 1912.)

Proceedings, nature of—Not triable by jury.

A proceeding by the United States to cancel a certificate of naturalization for fraud is a proceeding in equity, in which the defendant is not entitled to a jury trial.

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Same.

A proceeding brought by the United States to cancel a certificate of naturalization for fraud under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1907, p. 427), resembles a bill to revoke or set aside a grant or patent, or to cancel and vacate a judgment, and is not triable by jury.

U. S. v. Mansour, 170 Fed., 671. (District Court, S. D. New York. August 18, 1908.)

Proceedings, nature of—Pleadings—Procedure.

A suit to cancel a certificate of naturalization for fraud under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1907, p. 427), is a petition, in the nature of a bill in equity to set aside a judgment, and while the proof must be of the kind and force required to set aside

a judgment, the pleadings and procedure may be molded to meet the ends of justice.

U. S. v. Mansour, 170 Fed., 676. (District Court, S. D. New York. May 25, 1909.)

Presumption, statutory—Due process of law.

A statutory presumption applying to the trial of an issue determined by facts which occurred before the presumption existed, is nevertheless due process of law.

U. S. vs. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Jurisdiction.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), providing for the cancellation of certificates of naturalization, does not forfeit the right of citizenship, but merely gives jurisdiction to the courts to cancel a previous certificate on the ground of fraud or illegal procurement in its inception.

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Same.

Courts generally have jurisdiction to reverse their own judgments and decrees during the term at which they are rendered, for error of law, fraud, mistake, or any injurious irregularity, but it can be done after the term only under statute or under proceedings taken in time.

U. S. v. Aakervik, 180 Fed., 137. (District Court, D. Oregon. June 20, 1910.)

Same—State and Federal courts.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. 1907, p. 427), providing that it shall be the duty of the United States attorney, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured, confers jurisdiction upon such courts to cancel fraudulent or illegally procured certificates of naturalization, although granted by another court, state or federal.

U. S. v. Simon, 170 Fed., 680. (Circuit Court, D. Massachusetts. May 25, 1909.)

Same—State court.

The power of the court to correct or purge its records may be exercised in the case of the naturalization of an alien as well as in any other case in which the court has jurisdiction to act.

In re Macoluso's Naturalization, 85 Atl., 149. (Supreme Court of Pennsylvania. July 2, 1912.)

Jurisdiction on motion to revoke order admitting to citizenship —Consent to cancel.

Under Code Civ. Proc., Sec. 473, which authorizes a motion to set aside a judgment to be made within six

months from the time it is rendered, a motion made to vacate an order admitting to citizenship made more than three years after the rendition of the judgment, supported by the written consent of the person naturalized to the granting of the motion and his appearance in court, would not give the court jurisdiction.

In re Tinn, 84 Pac., 152, 148 Cal., 773, 113 Am. St. Rep., 354. (Supreme Court of California. March 14, 1906.)

Same—Cannot be sustained six months after date of order.

Under Code Civ. Proc., Sec. 473, a proceeding instituted to vacate an order admitting to citizenship cannot be sustained on motion after a lapse of six months from the time such order was made.

In re Tinn, 84 Pac., 152, 148 Cal., 773, 113 Am. St. Rep., 354. (Supreme Court of California. March 14, 1906.)

Jurisdiction of state courts under state laws—Comity.

Where a state court decides, under a construction of the state laws, that it has jurisdiction of a petition for naturalization, and admits the petitioner to citizenship, on a proceeding to cancel the certificate of naturalization for alleged want of jurisdiction of the state court, a federal district court of concurrent jurisdiction will, on considerations of comity, reach a conclusion in harmony with that of the state court respecting the construction of the state laws.

U. S. v. Anderson, 169 Fed., 201. (District Court, D. Idaho, C. D. April 1, 1909.)

Jurisdiction—Federal court—Certificate of naturalization granted by another court.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1907, p. 427), providing for the cancellation of certificates of naturalization for fraud or illegality, confers on any court authorized to naturalize jurisdiction to cancel the illegally issued certificate of a naturalized person resident within its district, although granted by another court.

U. S. v. Meyer, 170 Fed., 983. (District Court, E. D. Washington, S. D. May 27, 1909.)

Same.

Under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 427), a federal district court has jurisdiction of a proceeding to cancel the certificate of a citizen of the United States resident within its judicial district who was illegally admitted to citizenship by a state court.

U. S. v. Nisbet, 168 Fed., 1005. (District Court, W. D. Washington, N. D. March 31, 1909.)

Same—Marine Corps.

Where a state court issued a certificate of naturalization to an alien who had not made a previous declaration of intention of becoming a citizen of the United States, upon proof of good moral character and honorable discharge from the United States Marine Corps, such discharge having been for disability prior to the expiration of his term of enlistment, under the act of July 26, 1894, c. 165, 28 Stat. 124 (U. S. Comp. St. 1901, p. 1332), as amended by the

Naval Appropriation Act March 3, 1901, c. 852, 31 Stat. 1132 (U. S. Comp. St. 1901, p. 1095), providing that any alien of the age of twenty-one years and upwards who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such, a federal court has jurisdiction of a proceeding brought by the United States to cancel such illegally procured certificate, under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. 1909, p. 485).

U. S. v. Plaistow, 189 Fed., 1006. (District Court, W. D. New York. August 2, 1910.)

Collateral Attack.

A proceeding in which an alien is naturalized cannot be questioned collaterally.

In re Wagner, 135 N. Y. Supp. 678.

Same.

The judgment of a court of competent jurisdiction admitting an alien to citizenship, even if erroneous, is not void, cannot be collaterally attacked, and can only be set aside by appeal or writ of error taken for that very purpose.

State ex rel. Lacy, et al. v. Brandhorst, 56 S. W., 1094. (Supreme Court of Missouri, Division No. 2. May 21, 1900.)

Bill to revoke—Allegations—Presumption—Jurisdiction.

Where a bill to revoke a certificate of citizenship under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1907, p. 427), did not allege that the defendant had not in fact continuously resided in the United States or some territory thereof for the full period of five years, and within the state of Iowa one year, immediately prior to the filing of his petition, or that the defendant was not in fact entitled to be admitted as a citizen, or that the affidavits attached to the petition did not fully comply with the requirements of the naturalization act on their face or were in any manner insufficient to authorize the state court to admit the alien to citizenship, it will be presumed that the petition was sufficient to authorize the court to act thereon.

U. S. v. Rose, 166 Fed., 999. (Circuit Court, N. D. Iowa, W. D. February 3, 1909.)

Same—Allegations—Demurrer.

A bill to revoke a certificate of citizenship under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 U. S. Comp. St. Supp. 1907, p. 427), merely alleged that the witnesses who made affidavit to the petition and testified upon the final hearing, did not have personal knowledge of the defendant's residence in the United States and in the state of Iowa for the requisite time to authorize his admission to citizenship. The bill did not allege that the witnesses, or either of them, intentionally or knowingly testified falsely, or that the defendant procured them to so testify, or that he knew that they did not have personal knowledge of his residence in the United States and in the state of Iowa for the requisite time. The affidavit of the Chief Examiner, which formed the grounds for bringing the suit,

simply stated that it appeared from the naturalization records of his office that one of the witnesses did not see the defendant for two years of the period covered by his testimony, during which time the defendant was in Dakota. *Held*, that the bill was demurrable, for want of facts.

U. S. v. Rose, 166 Fed., 999. (Circuit Court, N. D. Iowa, W. D. February 3, 1909.)

Complaint, proceedings to revoke order made more than six months previously must be supported by.

Under Code Civ. Proc., Sec. 405, a proceeding to vacate an order admitting to citizenship made more than six months previously must be supported by a complaint.

In re Tinn, 84 Pac., 152, 148 Cal., 773, 113 Am. St. Rep., 354. (Supreme Court of California. March 14, 1906.)

Same—Sufficiency—Fraud.

Under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), a complaint by the United States in a proceeding to cancel a certificate of naturalization for fraud is insufficient where it fails to tender the material issue of fraud, but merely alleges change of residence, which is only *prima facie* upon the issue.

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Same—Consent to cancel certificate of naturalization.

An oral motion to revoke an order granting citizenship, supported by a written consent of the person naturalized

that such order be set aside for fraud, cannot be considered as a complaint under Code Civ. Proc., Sec. 405.

In re Tinn, 84 Pac., 152, 148 Cal., 773, 113 Am. St. Rep., 354. (Supreme Court of California. March 14, 1906.)

Private petition to cancel.

The naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 537), providing a procedure for cancelling certificates of naturalization obtained by fraud or otherwise illegally procured, does not deprive a state court of the power to enter a decree annulling a forged certificate of citizenship and directing its surrender for cancellation upon a private petition joined in by the district attorney of the county.

In re Macoluso's Naturalization, 85 Atl., 149. (Supreme Court of Pennsylvania. July 2, 1912.)

Petition to cancel—Demurrer—Amendment.

Where a judgment of the lower court overruling a demurrer to a petition for cancellation of a certificate of citizenship, and to vacate the order admitting the respondent to citizenship, was reversed on the ground that the petition was not supported by affidavit, the cause was remanded by this court, with direction to the lower court to sustain the demurrer, and, unless the petition might be amended to show the existence of a proper affidavit at the time it was filed, to dismiss the petition without prejudice.

Cohen v. U. S., 38 App. D. C. 123.

Same—Affidavit showing good cause—Demurrer.

In a petition filed by the United States to cancel a certificate of naturalization on the ground of fraud under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), an affidavit showing good cause therefor should appear in the record, either by reference and contemporaneous filing with the petition, or by allegations therein sufficient to show compliance with the statute, and to warrant its production if denied, and a petition not supported by such an affidavit is demurrable.

Cohen v. U. S., 38 App. D. C., 123.

Same—Averments—"Fraudulently or illegally procured"—Conclusions.

In a suit to cancel a certificate of naturalization under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1907, p. 427), the averment that the judgment "was fraudulently or illegally procured" is a mere conclusion and of no avail unless the facts alleged show that the judgment was so procured.

U. S. v. Rose, 166 Fed., 999. (Circuit Court, N. D. Iowa, W. D. February 3, 1909.)

Same—Service—Son claiming citizenship on deceased father's fraudulent certificate of naturalization.

Where it appears from a petition to the court for a rule to show cause why a certificate of naturalization should not be canceled that the person whose name appears in the certificate is dead, and that his son resides in another

county, and the hearing is continued and ten days' personal notice is served on the son by a justice of the peace of the county in which he resides, such service will be held sufficient.

In re Macoluso's Naturalization, 85 Atl., 149. (Supreme Court of Pennsylvania. July 2, 1912.)

Same—Absentees—Service by publication—Curator ad hoc.

In a proceeding to cancel a certificate of naturalization under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), which provides that "if the holder of such certificate is absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for service of summons by publication or upon absentees as provided by the laws of the state or place where such suit is brought," and the law of the state provides for the appointment of an attorney at law as *curator ad hoc* to represent an absentee, service on him is sufficient.

U. S. v. Ellis, 185 Fed., 546. (Circuit Court, E. D. Louisiana, New Orleans Division. March 3, 1911.)

Certiorari to review order of cancellation—Jurisdiction.

Under Code Civ. Proc., Sec. 1068, a writ of *certiorari* can only issue when the court under review has in some manner exceeded its jurisdiction, and an order of the Superior Court cancelling a previous order granting citizenship cannot be reviewed by *certiorari,* although it may have been

rendered on insufficient evidence or in some irregular method not going to the jurisdiction.

In re Tinn, 84 Pac., 152, 148 Cal., 773, 113 Am. St. Rep., 354. (Supreme Court of California. March 14, 1906.)

Evidence—Statements of consular officers—Residence abroad.

The statements of United States consular officers in a foreign country to the effect that defendant had established a permanent residence abroad, are admissible in evidence in a proceeding to cancel a certificate of naturalization for fraud under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485).

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Judgments—Amendment of proceedings nunc pro tunc—Directory provisions of statute.

The act of June 29, 1906, c. 3592, Sec. 9, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), provides that every final order which shall be made upon a petition for naturalization shall be under the hand of the court and entered in full upon a record kept for that purpose, and section 18 makes it a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this act, except upon a final order under the hand of a court having jurisdiction to make such order. *Held*, that where a court rendered a judgment admittng an alien to citizenship, and the clerk of the court issued a certificate of naturalization before the

judgment had been entered and signed, the proceeding is not void, but may be amended *nunc pro tunc,* the provisions of the statute being only directory.

U. S. v. Stoller, 180 Fed., 910. (District Court, E. D. Washington, E. D. July 8, 1910.)

Same—Res judicata—Ex parte proceedings.

The foundation of the doctrine of *res judicata,* or estoppel by judgment, is that both parties have had their day in court, and a certificate of naturalization procured *ex parte* is not entitled to conclusive effect against the public, and is open like other public grants to be revoked if found to have been unlawfully or fraudulently procured.

Johannessen v. United States, 32 S. Ct., 613, 225 U. S., 227; 56 L. Ed., 1066. (No. 230. Submitted April 22, 1912.—Decided May 27, 1912.)

Court's finding conclusive—Declaration of intention.

Where an alien twenty-five years of age was naturalized April 1, 1902, by a court of competent jurisdiction, and his certificate of naturalization recited that he had made his declaration of intention to become a citizen of the United States according to law, it should be accepted as a finding that all other requirements of the law necessary to sustain his application were complied with, and therefore the certificate of naturalization cannot be canceled on the ground that he did not make a declaration of intention two years before his admission to citizenship, the judgment of the court having been based upon a consideration of all the facts.

U. S. v. Nechman, 183 Fed., 788. (District Court, E. D. Michigan. May 12, 1910.)

Record of naturalization—Construction—Omission or inadvertence of clerk.

Every reasonable intendment of construction should be applied to give effect to a record of naturalization as would be allowed to sustain a record in ordinary cases; and an alien who has complied with all the requirements of the Act of Congress of April 14, 1802, c. 28, Secs. 1, 3, 2 Stat. 153, 155 (Rev. St. U. S., Sec. 2165 [U. S. Comp. St. 1901, p. 1329]), should not be deprived of his privileges on account of some immaterial omission or inadvertence of a clerk in making up the record.

City of Rockland v. Inhabitants of Hurricane Isle, 76 Atl., 286. (Supreme Judicial Court of Maine. November 27, 1909.)

"Illegally procured"—Jurisdiction—Procedure.

The term "illegally procured," used in the naturalization act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1911, p. 537), authorizing the cancellation of certificates of naturalization on the ground of fraud or illegality, imports a certificate issued by a court without jurisdiction or in violation of the laws of procedure.

U. S. v. Albertini, 206 Fed., 133. (District Court, D. Montana. May 28, 1913.)

"Illegally procured"—Error of law—Subornation.

The words "illegally procured," used in the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), means procured by subornation or some other illegal means used to impose upon the court, and not that the certificate was issued through error of law.

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Void Judgments—Obtained through fraud.

The general rule that judgments are not subject to attack unless they are void or obtained through fraud, is applicable to judgments which admit persons to citizenship.

U. S. v. Stoller, 180 Fed., 910. (District Court, E. D. Washington, E. D. July 8, 1910.)

Fraud.

Where an alien admitted to citizenship under Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), providing that only those persons possessing the necessary qualifications and intending *bona fide* to become citizens could be naturalized, did not in good faith intend to become a permanent citizen, and made his oath with a mental reservation to that effect, he is guilty of fraud in procuring the decree, and the certificate of citizenship may be canceled under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), authorizing the cancellation of certificates of naturalization on the ground of fraud.

U. S. v. Ellis, 185 Fed., 546. (Circuit Court, E. D. Louisiana, New Orleans Division. March 3, 1911.)

Same—Illegality.

A certificate of naturalization may be set aside for fraud or illegality in its procurement, which would comprehend false swearing by means of which the certificate was procured, as well as error in rendering judgment upon a given statement of facts.

U. S. v. Aakervik, 180 Fed., 137. (District Court D. Oregon. June 20, 1910.)

Same.

For the purpose of naturalization acts, all courts having jurisdiction thereunder are federal courts, and may vacate each other's judgments of naturalization for fraud or illegality.

U. S. v. Aakervik, 180 Fed., 137. (District Court D. Oregon. June 20, 1910.)

Same—Deception—Collusion.

Authority to vacate or set aside a judgment or decree which is a mere nullity is incident to the jurisdiction of all courts of record, and may be successfully invoked when the action of the court has been procured by fraud, deception or collusion.

In re Macoluso's Naturalization, 85 Atl., 149. (Supreme Court of Pennsylvania. July 2, 1912.)

Same.

A naturalization proceeding is not adversary, but essentially *ex parte,* and it is the duty of the applicant to make full and true disclosure of his qualifications; and a certificate of naturalization granted to an alien who stated in his petition for naturalization that he was unmarried, when he in fact had a wife and children in his native country whom he had deserted, is subject to cancellation on the ground of fraud.

U. S. v. Albertini, 206 Fed., 133. (District Court, D. Montana. May 28, 1913.)

Same.

Suit lies to revoke a judgment or decree where the unsuccessful party has been prevented from exhibiting his case fully, by his adversary's fraud or deception, as by keeping him away from court, or making a false promise to compromise, or where an attorney fraudulently assumes to represent the unsuccessful party and connives at his defeat or where his attorney sells out to the adversary.

U. S. v. Aakervik, 180 Fed., 137. (District Court D. Oregon. June 20, 1910.)

Same—Socialism.

An alien who, for the purpose of securing naturalization as a citizen of the United States under the act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), intentionally represented to the court at the final hearing of his application that "he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same," on a suit to cancel his certificate of naturalization brought by the United States upon the ground of fraud in that such representations were untrue, admitted that he advocates the common ownership of all land, buildings and industrial institutions, to be accomplished by use of the power of the ballot, and that when that object shall have been attained the political government of the country will be entirely abrogated, as there will be no use for it, and that such beliefs were entertained by him at and previous to his admission to citizenship. *Held*, that the certificate of naturalization was procured through fraud, and that the United States is entitled to its cancellation.[1]

U. S. v. Olsson, 196 Fed., 562. (District Court, W. D. Washington, S. D. May 11, 1912.)

Same—Protection abroad—Residence—Intention.

A certificate of naturalization granted to an alien who had not been a *bona fide* resident of the United States for five years before his admission to citizenship, and who did not, at the time of naturalization, intend to become a resident of the United States, but desired a certificate to secure protection abroad, will be canceled for fraud.

U. S. v. Mansour, 170 Fed., 671. (District Court, S. D. New York. August 18, 1908.)

Same—Intention to become a permanent citizen.

Where an alien admitted to citizenship under Sec. 2165, Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), providing that only those persons possessing the necessary qualifications and intending *bona fide* to become citizens could be naturalized, did not in good faith intend to become a permanent citizen, and made his oath with a mental reservation to that effect, he is guilty of fraud in procuring the decree, and the certificate of citizenship may be canceled under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), authorizing the cancellation of certificates of naturalization on the ground of fraud.

U. S. v. Ellis, 185 Fed., 546. (Circuit Court, E. D. Louisiana, New Orleans Division. March 3, 1911.)

Technical or formal defects in naturalization proceedings not vital.

Naturalization proceedings are governed by the same general principles as ordinary judicial proceedings, and should

not be vacated if the defects are merely technical and formal, although the defects cause annoyance and trouble to the supervising administrative department.

U. S. v. Erickson, 188 Fed., 747. (District Court, W. D., Michigan, S. D. September 28, 1910.)

Competent witness substituted for one disqualified.

A certificate of naturalization should not be canceled as having been illegally obtained where one of the verifying witnesses to the petition for naturalization was found to be disqualified because not a citizen of the United States and his name erased from the witnesses' affidavit and the name of a competent witness substituted and the affidavit redated as of the date of verification by the new witness, although no duplicate of the amended affidavit was forwarded to the Department of Commerce and Labor.

U. S. v. Erickson, 188 Fed., 747. (District Court, W. D. Michigan, S. D. September 28, 1910.)

Laches, cancellation proceedings barred by.

The time for vacating an order admitting to citizenship for an error of law of the court having expired before naturalization act, June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), suit does not now lie to vacate it, though that act authorizes suits to vacate certificates of citizenship.

U. S. v. Aakervik, 180 Fed., 137. (District Court, D. Oregon. June 20, 1910.)

Laches, cannot be pleaded against United States.

In a suit to cancel a certificate of naturalization the defense of *laches* cannot be pleaded against the United States.

U. S. v. Spohrer, 175 Fed., 440. (Circuit Court, D. New Jersey. January 14, 1910.)

Moral character—Well disposed to the good order and happiness of the United States—Drunkenness.

A certificate of naturalization which might immediately be obtained anew will not be canceled on the ground that the holder had not for five years immediately preceding the date of his application for citizenship behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, where it is shown that he was convicted of drunkenness fifteen times during the ten years prior to the five year period, and once thereafter, but had reformed and remained sober for more than four and one-half years prior to the filing of his petition for naturalization.

U. S. v. Dwyer, 170 Fed., 686. (Circuit Court, D. Massachusetts. May 18, 1909.)

Residence abroad.

In a proceeding to cancel a certificate of naturalization under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), a decree is authorized where it is shown that the alien was naturalized August 11, 1899, arrived in South Africa November 23d of the same year, and engaged in business there, where he continued to reside until after March 11, 1910, when a suit was instituted to cancel his certificate of citizenship, it further appearing that he had

stated to the United States consul that he did not know when he could return to the United States, that he was not engaged solely as a representative of American trade and commerce, that his residence abroad was not for reasons of health or education, and that no controlling exigency beyond his power to foresee had prevented him from carrying out a *bona fide* intention of returning to the United States.

U. S. v. Ellis, 185 Fed., 546. (Circuit Court, E. D. Louisiana, New Orleans Division. March 3, 1911.)

Same—Physical absence—Fraud—Illegality.

The residence in the United States for a period of at least five years, required as a prerequisite to naturalization under the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), is broken by the physical absence of the alien from the United States for seven months, during which time he obtained admission to another allegiance; and his certificate of naturalization as a citizen of the United States granted under these conditions was fraudulently or illegally procured, and subject to cancellation on either ground.

U. S. v. Simon, 170 Fed., 680. (Circuit Court, D. Massachusetts. May 25, 1909.)

Residence in United States for less than five years.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), which authorizes a suit by the United States to cancel a certificate of naturalization on the ground of fraud or that it was illegally procured, is constitutional, and the United States may maintain a suit thereunder in a federal court to cancel a certificate issued by a state court under that act or former statutes, on the ground

of fraud, in that the allegation and evidence that the applicant had resided in the United States five years was untrue.

U. S. v. Spohrer, 175 Fed., 440. (Circuit Court, D. New Jersey. January 14, 1910.)

United States attorney, duty of to prosecute proceedings.

The naturalization act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1907, p. 427), imposes upon the United States attorney, and not upon the Bureau of Immigration and Naturalization, or its representatives, the duty of prosecuting proceedings to cancel certificates of naturalization.

U. S. v. Anderson, 169 Fed., 201. (District Court, D. Idaho, C. D. April 1, 1909.)

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[1] "The people of this country ordained the Constitution of the United States, to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty to themselves and their posterity, and thereby established a national government, to endure permanently. The notion that citizens of this country may absolve themselves from allegiance to the Constitution of the United States, otherwise than by expatriation, is a dangerous heresy. The nation generously and cordially admits to its citizenship aliens having the qualifications prescribed by law, but recognizing the principle of natural law, called the law of self-preservation, it restricts the privilege of becoming naturalized to those whose sentiments are compatible with genuine allegiance to the existing government as defined by the oath which they are required to take. Those who believe in and propagate crude theories hostile to the Constitution are barred."

CERTIFICATE OF ARRIVAL.

A certificate of arrival must be attached to the petition for naturalization.

An alien who arrived in the United States after the passage of the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 597 (U. S. Comp. St. Supp. 1909, p. 479), must, at the time of filing his petition for naturalization, file with the clerk of the court a certificate from the Department of Commerce and Labor stating the date, place and manner of his arrival, as required by the act, and upon failure to do so the petition will be dismissed.

In re Liberman, 193 Fed., 301. (District Court, W. D. Washington, N. D. January 31, 1912.)

Certificate of arrival not based upon registry made at the time of alien's arrival in the United States, but upon information subsequently obtained, does not comply with Sec. 4, Act June 29, 1906.

Sec. 1, Act June 29, 1906, c. 3592, 34 Stat. 597 (U. S. Comp. St. Supp. 1911, p. 124), provides that it shall be the duty of the Bureau of Immigration and Naturalization to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act of the name, age, occupation, personal de-

scription (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to each alien a certificate of such registry, with the particulars thereof. Sec. 4 of the said act (U. S. Comp. St. Supp. 1911, p. 530), provides that at the time the alien files his petition for naturalization there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this act, stating the date, place and manner of his arrival in the United States, etc. *Held,* That a certificate not based on a registry made at the time of the alien's arrival in the United States, but upon information subsequently obtained to the effect that while at the port of New York he deserted the ship upon which he was employed and entered the United States without inspection, which was granted for the sole purpose of enabling him to file a petition for naturalization so that the court might determine whether the certificate required by Sec. 4 must be made up from the registry prescribed in Sec. 1 of the naturalization act, does not meet the requirements of Sec. 4 of said act; and before the applicant can be naturalized he must be properly inspected and manifested by the proper immigration officers, and then refile his petition.

In re Hollo, 206 Fed., 852. (District Court, N. D. Ohio, E. D. June 2, 1913.)

Certificate of arrival not based upon registry made at the time of alien's arrival in the United States, but upon information subsequently obtained, is sufficient.

Where, through oversight on the part of the immigration officers, no registry was made of the arrival of an alien in the

United States as required by naturalization act June 29, 1906, Sec. 1, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 124), and a certificate of arrival, regular in form upon its face, was issued by the Department of Commerce and Labor upon information subsequently obtained for the sole purpose of allowing a petition for naturalization to be filed so that a judicial determination might be reached as to the sufficiency of such certificate to meet the requirements of Sec. 4 of said act (U. S. Comp. St. Supp. 1911, p. 530), the court will not refuse naturalization to an alien otherwise qualified upon the ground that the certificate was not made up from the registry prescribed by Sec. 1 of said act.

In re Page, 206 Fed., 1004. (District Court, E. D. Michigan, S. D. April 14, 1913.)

CERTIORARI.

Review by certiorari.

Certiorari by the State, on the relation of the United States, against the District Court of the Seventeenth District and others, to review a judgment of said court. (See State ex rel. U. S. v. District Court of Seventeenth Dist., et al., 120 N. W., 898.)

Certiorari can only issue where the court has exceeded its jurisdiction.

Under Code Civ. Proc., Sec. 1068, a writ of *certiorari* can only issue when the court under review has in some manner exceeded its jurisdiction, and an order of the Superior Court cancelling a previous order granting citizenship cannot be reviewed by certiorari, although it may have been rendered on insufficient evidence or in some irregular method not going to the jurisdiction.

In re Tinn, 84 Pac., 152, 148 Cal., 773, 113 Am. St. Rep., 354. (Supreme Court of California. March 14, 1906.)

CHILDREN.

Naturalization through parent.

(Syllabus by the Court)

The naturalization of a father operates to confer the right of citizenship upon his minor child, who is dwelling at the time of the father's naturalization within the jurisdiction of the United States, or who dwells within that jurisdiction subsequent to the father's naturalization and during his own minority.

Conover v. Old, 77 Atl., 1070. (Supreme Court of New Jersey. Argued June term, 1910.)

Same—Resident abroad—Immigration.

The naturalization of the father does not confer citizenship upon his minor daughter who had been refused admission to the United States by the immigration officers as an alien afflicted by trachoma, a dangerous, contagious disease, and was at the time receiving hospital treatment by authority of the Acting Secretary of the Department of Commerce and Labor, under bond appropriate to such cases; nor would the naturalization of the father avoid the penalty of the bond.

In re Camaras, 202 Fed., 1019. (District Court, D. Rhode Island. February 19, 1913.)

Same.

The act of March 2, 1907, Sec. 5, 34 Stat. 1229 (U. S. Comp. St. Supp. 1909, p. 440), provides that a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of the parent, provided that such naturalization takes place during the minority of the child; and, provided further, that the citizenship of such minor child shall begin at the time that such minor child begins to reside permanently in the United States. *Held,* that a minor child who had never resided in the United States, but whose father was a naturalized citizen, did not become a citizen until permanently resident in the United States, and hence was not entitled to enter the United States as a citizen.

U. S. ex. rel. De Rienzo v. Rodgers, U. S. Com'r of Immigration, et al., 182 Fed., 274. (District Court, E. D. Pennsylvania. October 26, 1910.)

Same.

The act of March 2, 1907, Sec. 5, 34 Stat. 1229 (U. S. Comp. St. Supp. 1909, p. 440), provides that a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of the parent, provided that such naturalization takes place during the minority of the child; and, provided further, that the citizenship of such minor child shall begin at the time that such minor child begins to reside permanently in the United States. *Held,* that the minor child of a naturalized parent, born abroad, where he remained until after the naturalization of his father, is an alien until he begins to reside permanently in the United States, and he cannot begin to so reside if he

belongs to a class of aliens prohibited from entering the United States by the immigration laws.

U. S. ex. rel. De Rienzo v. Rodgers, U. S. Com'r Immigration, et al., 185 Fed., 334. (Circuit Court of Appeals, Third Circuit. April 12, 1911.)

Same.

The naturalization of the father does not confer citizenship upon a minor child who has never dwelt in the United States, Sec. 2172 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1334), applying only to the minor children of naturalized citizens "dwelling in the United States." Hence, such child is subject to the provisions of the act of March 3, 1903 (32 Stat. L. 1213, chap. 1012, U. S. Comp. St Supp. 1903, p. 170, U. S. Comp. St. Supp. 1905, p. 274), debarring from the United States aliens afflicted with a dangerous contagious disease.

Zartarian v. Billings, 27 S. Ct., 182, 204 U. S., 170, 51 L. Ed., 428. (January 7, 1907.)

Naturalization of stepfather.

When the husband of an alien woman becomes naturalized, she, as well as her infant son, dwelling in the United States, likewise become citizens.

U. S. ex rel. Fisher v. Rodgers, U. S. Immigration Com'r, et al., 144 Fed., 711. (District Court, E. D. Pennsylvania. April 5, 1906.)

CITIZENSHIP.

Illegal naturalization—Surrender of certificate for cancellation—Status.

A person unlawfully naturalized under the laws of the United States, who has surrendered his certificate of citizenship for cancellation, is not a citizen of the United States.

Dicta In re Aprea, 158 Fed., 702. (Circuit Court, S. D. N. Y. February 26, 1908.)

Same.

An applicant for citizenship is bound to see that the jurisdictional facts upon which the grant is predicated actually exist, and if they do not exist he takes nothing by his paper grant.[1]

Dicta, U. S. v. Spohrer, 175 Fed., 440. (Circuit Court, D. New Jersey. · January 14, 1910.)

[1] The following language contained in Spohrer v. U. S., *supra,* is quoted with approval by the Supreme Court in Johannessen v. U. S.:

"An alien friend is offered, under certain conditions, the privilege of citizenship. He may accept the offer and become a citizen upon compliance with the prescribed conditions, but not otherwise. His claim is of favor, not of right. He can only become a citizen upon and after a strict compliance with the Acts of Congress. An applicant for this high privilege is bound, therefore, to conform to the terms upon which alone the right he seeks can be conferred. It is his

province, and he is bound, to see that the jurisdictional facts upon which the grant is predicted actually exist, and if they do not he takes nothing by his paper grant. Fraud cannot be substituted for facts."

CLERKS OF COURTS.

State Courts—Authority—Nature of duties.

In authorizing state courts to act in naturalization proceedings the United States government selects such courts and the clerks thereof as government agencies through whom said government is discharging a function of sovereignty; and, while Congress has power to confer authority upon state courts which they may constitutionally exercise when authorized to do so, it cannot make the acts in that regard a part of their duties as state courts; and the power conferred and the duties imposed under the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), are not *ex-officio* powers and duties belonging to and devolving upon the state office as such.

Eldridge v. Salt Lake County, 106 Pac., 939. (Supreme Court of Utah. January 17, 1910.)

Same—Power of Congress to prescribe fees.

Const. Wash., Sec. 6, Art. 4, expressly confers the power of naturalization upon the superior courts. The statutes of the state of Washington (Laws of 1907, p. 9, c. 56), provide for a fee of $3, "for entering the final admission of an alien to citizenship, and for a certified copy thereof under seal." The United States laws (Act of June 29, 1906, c. 3592, 34 Stat. 500, Sec. 13, U. S. Comp. St. Supp. 1907,

p. 426), provide that a fee of $2 shall be charged and collected by the clerk of the court for such services, one-half of which shall be accounted for to the Bureau of Immigration and Naturalization; and Sec. 21 of the same act provides that it shall be unlawful for the clerk to charge, collect or receive any other or additional fees or moneys than those specified in Sec. 13 of the act. Congress has power under the Constitution of the United States to establish a uniform rule of naturalization throughout the United States (8 Fed. St. ann., Art. 1, Sec. 8). Relator was admitted to citizenship by the Superior Court. *Held,* that on payment of $2 the clerk of the court must issue to relator a certificate of naturalization, since the power of Congress to prescribe fees in naturalization proceedings is exclusive when exercised, and is binding upon the state and state courts.

State v. Libby, 92 Pac., 350, 47 Wash., 481. (Supreme Court, Washington. November 5, 1907.)

Same—Fees must be turned in to county treasurer.

A resolution of the county board of Barron County, Wisconsin, passed pursuant to Laws 1901, c. 411, placed the clerk of the circuit court on a salary basis, by which he was to receive for his services a fixed salary in lieu of all emoluments, and required that all fees, per diem, and compensation for services rendered by him be turned over to the county treasurer. The naturalization act of June 29, 1906, c. 3592, Sec. 13, 34 Stat., 600 (U. S. Comp. St. Supp. 1909, p. 483), provides for fees to be charged by clerks of courts exercising naturalization jurisdiction, and authorizes the clerks to retain one-half of the fees received, and pay over the balance to the Bureau of Immigration and Naturalization. *Held,* that the words "authorized" and "per-

mitted" refer solely to the adjustment between the clerks and the Bureau, and do not authorize clerks on a salary basis to hold part of such fees as against the counties, but that such fees must be turned over to the county treasurer as fees received by the clerks in their official capacity.

Barron County v. Beckwith, 124 N. W., 1039, 142 Wis., 519. (Supreme Court of Wisconsin. Feb. 22, 1910.)

Same.

The clerk of the city and county of San Francisco must pay into the city and county treasury one-half of the fees collected in naturalization proceedings under the provisions of the Act of Congress of June 29, 1906, 34 Stat. 596, c. 3592 (U. S. Comp. St. Supp. 1909, p. 483), he being bound to account therefor as money coming into his hands as county clerk, the remaining one-half thereof to be paid over to the Bureau of Immigration and Naturalization; and his surety is liable on his official bond for his failure to pay over such fees.[1]

City and County of San Francisco v. Mulkrevy, et al., 113 Pac., 340. (Court of Appeal, First District, California. December 13, 1910. Rehearing denied by Supreme Court February 9, 1911.)

Same.

Services performed by the clerk of the county court in naturalization proceedings under Act Cong. June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 483), are performed in his official capacity, and the fees must be accounted for under Rem. Bal. Code, Sec. 4073.

Franklin County v. Barnes, 123 Pac., 779. (Wash.)

Same—Fees may be retained by the Clerk.

St. 1908, c. 253, which requires that all fees received by the clerk in naturalization cases shall be paid over to the county treasurer, conflicts with Act Cong. June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 483), conferring naturalization jurisdiction upon certain courts, and requiring the clerk to account for one-half of the fees collected, and permitting him to retain the other half, first paying therefrom all additional clerical force, and the clerk need not account to the county treasurer for fees received in naturalization cases.

Inhabitants of Hampden County v. Morris, 93 N. E., 579, 207 Mass., 167. (Supreme Judicial Court of Massachusetts. Jan. 2, 1911.)

Same.

The clerk of a county court receiving an annual salary is not required to pay over to the county one-half of the fees collected in naturalization proceedings under the provisions of the Act of Congress of June 29, 1906 (34 Stat. 596, U. S. Comp. St. Supp. 1909, p. 483).

In re Beyer, 130 N. Y. Supp., 281. (Supreme Court, Special Term, Erie County. May, 1911.)

Same.

The clerk of a district court may retain fees collected by him in naturalization proceedings under the provisions of the Act of Congress of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 483), such action not being in

violation of the principle that an incumbent of a public office must discharge the duties imposed upon such office for the compensation fixed by law, and if additional duties are imposed upon such office without additional compensation such duties must be discharged for the compensation fixed by law.

Eldridge v. Salt Lake County, 106 Pac., 939. (Supreme Court of Utah. Jan. 17, 1910.)

Same.

The clerk of a state district court in discharging the duties and performing services in naturalization proceedings under the povisions of the Act of Congress of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 483), acts as the agent of the government, and not *ex-officio* clerk of the court; hence he is not required to account to the county for fees collected by him in such proceedings.

Eldridge v. Salt Lake County, 106 Pac., 939. (Supreme Court of Utah. Jan. 17, 1910.)

Certified copy of declaration of intention is prima facie evidence of existence of original.

A certified transcript of a record, showing that the applicant had appeared before the clerk of the court and made declaration of intention to become a citizen of the United States and to renounce his existing allegiance, certified the same day to be a full, true and complete transcript of the record as the same then remained in his office, duly attested with the seal of the court, should prevail over the testimony of a deputy clerk seven years later that he had made a thor-

ough search and was unable to find such a record, and that the naturalization records of the court were very poorly kept.

U. S. v. Brelin, 166 Fed., 104. (Circuit Court of Appeals, Eighth Circuit. December 4, 1908.)

Same.

A certified copy of a record, by a public officer authorized to make it, not only vouches for its own correctness, but proves *prima facie* the original to have been in existence when it was made, an officer's certificate being accorded the sanctity of a deposition.

U. S. v. Brelin, 166 Fed., 104. (Circuit Court of Appeals, Eighth Circuit. December 4, 1908.)

Duty to file petition for naturalization.

The clerks of federal courts are not subject to instruction by district attorneys, or by the United States itself, as a party to a judicial proceeding, but it is their duty to file petitions for naturalization which contain all proper allegations, though in their judgment the petitioner is not eligible to naturalization as a citizen of the United States because of race, color or other disqualifications.

In re Halladjian, et al., 174 Fed., 834. (Circuit Court, D. Massachusetts. December 24, 1909.)

Same.

Act June 29, 1906, c. 3592, Sec. 3, 34 Stat., 596 (U. S. Comp. St. Supp. 1909, p. 478), is mandatory upon clerks of

United States Courts in requiring them to receive, file and enter applications for citizenship immediately upon receipt thereof.

Marvin v. U. S., 45 Ct. Cl., 528.

Refiling petition—Disqualified witness.

Where a petition for naturalization is defective in that one of the verifying witnesses is disqualified because not a citizen of the United States, it would be more orderly for the clerk to refile the petition and give it a new consecutive number upon the records than to permit its amendment by the substitution of a competent witness and redating the witnesses' affidavit, but the absence of a filing endorsement or calendar entry by the clerk with reference to a petition which is actually filed, and upon which the clerk has acted, is immaterial, if the fact of filing sufficiently appears.

U. S. v. Erickson, 188 Fed., 747. (District Court, W. D. Michigan, S. D. September 28, 1910.)

Removal of naturalization records from clerk's office not authorized.

The clerk of the United States Circuit Court has no authority to remove the records of the court to a private residence and there take the alien's declaration of intention to become a citizen of the United States.

In re Langtry, 31 Fed., 879. (Circuit Court, D. California. July 19, 1887.)

See also Santo Scola's Case, 8 Pa. Co. Ct. Rep., 344 (1890); Bosa's Application, 6 Kulp, 83 (1890), to the same effect.

Reports to Department of Commerce and Labor.

The failure of the clerk of the court to report to the Department of Commerce and Labor any details which he ought to have reported concerning a petition for naturalization cannot affect the right of the applicant for citizenship.

U. S. v. Erickson, 188 Fed., 747. (District Court, W. D. Michigan, S. D. September 28, 1910.)

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[1] The San Francisco city charter provides that, "* * * and every officer shall pay all moneys coming into his hands as such officer, no matter from what source derived or received, into the treasury of the city and county of San Francisco within twenty-four hours after the receipt of the same." The case of Eldridge v. Salt Lake County is distinguished. The court said: "Our attention is called to Eldridge v. Salt Lake County, 106 Pac., 939, where the Supreme Court of Utah held that the clerk may retain such fees under the Act of Congress in question. While we do not approve of the doctrine as laid down in the Utah case, it is sufficient to say that it can be readily distinguished from the case at bar. There the law provided that the county officers 'shall be required by law to keep true and correct accounts of all fees collected by them, and to pay the same into the proper treasury, and the officer whose duty it is to collect such fees shall be held responsible on his bond for the same.' It does not appear from that opinion to have been a condition of the bond, or the duty of the clerk, to perform all official duties that may have been imposed upon him by law, nor did the statute require the clerk to pay all moneys, 'no matter from what source derived,' into the treasury of the county."

COMMISSIONERS.

Appointment of commissioners in naturalization cases is not authorized.

The appointment of special commissioners in naturalization cases is not authorized.

Alexander v. U. S., 43 Ct. Cl., 389.

COURTS.

Jurisdiction, common law—Clerk—Seal.

Under Sec. 2165, Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), a court which has some common law jurisdiction, and a clerk and a seal, has jurisdiction to naturalize aliens as citizens of the United States, it not being essential that the court should have general common law jurisdiction.

U. S. v. Nechman, 183 Fed., 788. (District Court, E. D. Michigan. May 12, 1910.)

Common law jurisdiction defined.

Under Sec. 2165, Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), a court of common law jurisdiction authorized to admit aliens to citizenship need not be one possessing a general common law jurisdiction, but if any part of its jurisdiction answers that designation the requirement of the statute is fulfilled. Courts having common law jurisdiction are those who have the power to punish offenses, to enforce rights, or to redress wrongs recognized by the common law, or which, in the determination of causes which they decide, are governed by the principles, rules, and usages of that law. The term "having common law jurisdiction" is used to distinguish these courts from those which have no jurisdiction save in equity, in admiralty, or in matters not involving offenses or rights under the common law. The county courts of Tennessee do not come

within this description, and therefore are not courts of common law jurisdiction with authority to naturalize aliens as citizens of the United States.

In re Wolf, 188 Fed., 519. (Circuit Court, M. D. Tennessee, Nashville Division. April 13, 1911.)

Jurisdiction, state and federal courts, concurrent, not revisory.

A state court having reached a conclusion adverse to the government and favorable to its jurisdiction of a petition for naturalization, and admitted the petitioner to citizenship, and no steps were taken for a review by the Superior Court of the state, which alone could authoritatively construe the local law on which the jurisdiction depended, a federal district court will not cancel the certificate so issued in a proceeding by the government, such court having concurrent and not revisory jurisdiction.

U. S. v. Anderson, 169 Fed., 201. (District Court, D. Idaho, C. D. April 1, 1909.)

Same—Comity, state and federal courts.

Where a state court decides, under a construction of the state laws, that it has jurisdiction of a petition for naturalization, and admits the petitioner to citizenship, on a proceeding to cancel the certificate of naturalization for alleged want of jurisdiction of the state court, a federal district court of concurrent jurisdiction will, on considerations of comity, reach a conclusion in harmony with that of the state court respecting the construction of the state laws.

U. S. v. Anderson, 169 Fed. 201. (District Court, D. Idaho, C. D. April 1, 1909.)

Jurisdiction vests when the petition for naturalization is filed and notice posted.

The jurisdiction of the court over the petition for naturalization of an alien resident within the judicial district of such court vests at the time the petition is filed and notice given by the clerk of the final hearing thereon; and the court does not become divested of such jurisdiction by reason of the removal of the residence of the petitioner from the judicial district of such court.

In re Burke, 110 N. Y. Supp., 36, 144 N. Y. St. Rep., 58 Misc. Rep., 3. (Supreme Court, Special term, Kings County. February, 1908.)

Jurisdiction—Exercise of.

Citizenship in the United States is not a right but a privilege, and can only be granted by the courts in accordance with the laws enacted by Congress.

In re Buntaro Kumagai, 163 Fed., 922. (Dstrict Court, W. D. Washington, N. D. September 3, 1908.)

Same.

Every state has, in general, the right to prescribe the terms upon which it will admit aliens to citizenship, and compliance with those terms is a condition precedent to the power of the court to enter its decree.

In re Trum, 199 Fed., 361. (District Court, W. D. Missouri, W. D. October 2, 1912.)

Same.

Jurisdiction to naturalize aliens is conferred by statute and must be exercised in a special and summary manner;

and a judgment in a naturalization proceeding can only be supported by a record which shows the existence of facts necessary to confer jurisdiction.

Ex parte Lange, 197 Fed., 769. (District Court, E. D. Missouri, E. D. July 22, 1912.)

Same.

The state courts may, with the consent of the legislature, exercise the jurisdiction to naturalize conferred by Act Cong. June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), but the jurisdiction must be exercised in conformity with the federal statute, not only as to matters that enter directly into the subject of naturalization, but as well in matters of legislation by Congress that are fairly incidental to the exercise of the power given by the Constitution to deal with the subject.

Inhabitants of Hampden County v. Morris, 93 N. E., 579, 207 Mass., 167. (Supreme Judicial Court of Massachusetts. January 2, 1911.)

Same.

In authorizing state courts to act in naturalization proceedings the United States government selects such courts and the clerks thereof as government agencies through whom said government is discharging a function of sovereignty; and, while Congress has power to confer authority upon state courts which they may constitutionally exercise when authorized to do so, it cannot make the acts in that regard a part of their duties as state courts; and the power conferred and the duties imposed under the naturali-

zation act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), are not *ex-officio* powers and duties belonging to and devolving upon the state office as such.

Eldridge v. Salt Lake County, 106 Pac., 939. (Supreme Court of Utah. January 17, 1910.)

Same—Evidentiary facts must be proved—Recording.

Jurisdiction of the subject matter of naturalization was conferred under Act of Congress of April 14, 1802, c. 28, Secs. 1, 3, 2 Stat. 153, 155 (Rev. St. U. S., Sec. 2165, U. S. Comp St., 1901, p. 1329), and the requisite evidentiary facts in a naturalization proceeding must be proved to the satisfaction of the court, but need not be recorded; hence, it is not necessary that the record show one year's residence in the state in which the petition is filed.

City of Rockland v. Inhabitants of Hurricane Isle, 76 Atl., 286. (Supreme Judicial Court of Maine. November 27, 1909.)

Same—Declaration of intention less than two years old—Mandatory provisions.

The act of June 29, 1906, c. 3592, Sec. 4, subd. 2, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), requires that an alien "shall make and file" his petition for naturalization "not less than two years nor more than seven years" after he has made such declaration of intention. This provision is mandatory, and the court has no jurisdiction of a petition for naturalization filed less than two years after the making

of the declaration of intention, although the hearing thereon is not until after the expiration of the two years.

U. S. v. Van Der Molen, 163 Fed., 650. (District Court, W. D. Michigan, S. D. August 10, 1908.)

Same—"Judicial District."

The act of June 29, 1906, c. 3592, Sec. 3, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), provides that the naturalization jurisdiction of all courts herein specified, state, territorial and federal, shall extend only to aliens resident within the respective judicial districts of such courts. Art. 4, Sec. 6, Const. Wash., confers jurisdiction upon the Superior Courts of that state within their judicial districts, and by Rem. and Ball. Codes, Sec. 9050, Klickat and Clarke counties, which are in the same judicial district, are presided over by the same judge. *Held,* that while sitting in Clarke county the Superior Court had jurisdiction to naturalize an alien resident of Klickat county, in the same judicial district.

U. S. v. Stoller, 180 Fed., 910. (District Court, E. D. Washington, E. D. July 8, 1910.) U. S. v. Shurr, *Infra,* distinguished.

Same.

Under the act of June 29, 1906, c. 3592, Sec. 3, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), providing that the naturalization jurisdiction of all courts herein specified, state, territorial and federal, shall extend only to aliens resident within the respective judicial districts of such courts, the Circuit Court for the county of Muskegan, Michigan, is without jurisdiction to naturalize an alien who, both at the time of

filing his petition and at the final hearing thereon, was a resident of Allegan county, Michigan.

U. S. v. Wayer, 163 Fed., 650. (District Court, W. D. Michigan, S. D. August 7, 1908.)

Same.

The act of June 29, 1906, c. 3592, Sec. 3, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), provides that the naturalization jurisdiction of all courts herein specified, state, territorial and federal, shall extend only to aliens resident within the respective judicial districts of such courts. Under this provision the naturalization jurisdiction of a court extends only to aliens resident within its territorial jurisdiction, and the Circuit Court of Michigan, which has jurisdiction only in the county in which it sits, cannot admit an alien to citizenship who resides in another county, although such county is a part of the same judicial circuit over which the judge presides.

U. S. v. Schurr, et al., 163 Fed., 648. (District Court, W. D. Michigan, S. D. August 4, 1908.)

Same.

Under the naturalization act of June 29, 1906, c. 3592, Sec. 3, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), providing that the naturalization jurisdiction of all courts herein specified shall extend only to aliens resident within the respective judicial districts of such courts, the jurisdiction of district courts of the state of Kansas to naturalize aliens as citizens of the United States extends only to alien residents of the particular county in which the court is at the time sitting; hence, where an alien residing in one county of the judicial

district of the court files a petition for naturalization in another county of the same judicial district, it must be denied for want of jurisdiction.

U. S. v. Johnson, 181 Fed., 429. (Circuit Court, D. Kansas, First Division. December 18, 1908.)

Same—Removal of alien from judicial district after filing a petition for naturalization.

A naturalization proceeding is like unto a civil action, the first step of which is the petition provided for by the act of June 29, 1906, c. 3592, Sec. 4, subd. 2, 34 Stat. 597 (U. S. Comp. St. Supp. 1909, p. 478), and a change of residence of the petitioner from the judicial district in which the petition was filed and before the final hearing thereon would not affect the jurisdiction of the court, even if section 3 of the act, providing that, "the naturalization jurisdiction of all courts herein specified, state, territorial and federal, shall extend only to aliens resident within the respective judicial districts of such courts," refers to a judicial district which is but a part of the territory throughout which the court in question has jurisdiction.

U. S. v. Breen, 120 N. Y. Supp., 304. (Supreme Court, Appellate Division, Second Department. December 30, 1909.)

Same.

The jurisdiction of the court over the petition for naturalization of an alien resident within the judicial district of such court vests at the time the petition is filed and notice given by the clerk of the final hearing thereon; and the court does not

become divested of such jurisdiction by reason of the removal of the residence of the petitioner from the judicial district of such court.

In re Burke, 110 N. Y. Supp., 36, 144 N. Y. St. Rep., 58 Misc. Rep., 3. (Supreme Court, Special term, Kings County. February, 1908.)

Records—Validity.

A record of naturalization need not show jurisdiction, or that all the legal prerequisites have been complied with, nor show the requisite previous declaration of intention to become a citizen, in order to import validity.

In re Symanowsski, 168 Fed. 978. (Circuit Court, N. D. Illinois, E. D. March 29, 1909.)

Power to correct or purge naturalization records.

The power of the court to correct or purge its records may be exercised in the case of the naturalization of an alien as well as in any other case in which the court has jurisdiction to act.

In re Macoluso's Naturalization, 85 Atl., 149. (Supreme Court of Pennsylvania. July 2, 1912.)

Certified copy of record prima facie evidence of existence of original.

A certified copy of a record, by a public officer authorized to make it, not only vouches for its own correctness, but proves *prima facie* the original to have been in existence when

it was made, an officer's certificate being accorded the sanctity of a deposition.

U. S. v. Brelin, 166 Fed., 104. (Circuit Court of Appeals, Eighth Circuit. December 4, 1908.)

Records—Evidence of naturalization.

(Syllabus by the court.)

Where no record of naturalization can be produced, evidence that a person having the requisite qualifications to become a citizen did in fact vote and hold office is sufficient to warrant the inference that he had been duly naturalized. (Boyd v. Nebraska, 143 U. S., 135, 12 Sup. Ct., 375, 36 L. Ed., 103, followed.)

Conover v. Old, 77 Atl., 1070. (Supreme Court of New Jersey. Argued June term, 1910.)

Same—Secondary evidence of naturalization.

(Syllabus by the court.)

Before proof outside the record of naturalization can be resorted to, some excuse must appear for the substitution of secondary evidence for the documentary proof.

Conover v. Old, 77 Atl., 1070. (Supreme Court of New Jersey. Argued June term., 1910.)

Same.

(Syllabus by the court.)

The extreme youth of the respondent at the time of his father's naturalization, the fact that they lived together but little and were at one time alienated from each other, that the father's naturalization was in a distant state and at an unknown place, and that there were other children who might

have the custody of the father's certificate of naturalization, are sufficient to excuse the production of documentary proof of the fact of naturalization.

Conover v. Old, 77 Atl., 1070. (Supreme Court of New Jersey. Argued June term, 1910.)

Forged certificate of naturalization, surrender of.

A court has power to prevent the continued fraudulent use of its seal by requiring the surrender of a certificate of naturalization which was a forgery and not authorized by a judgment or decree of the court.

In re Macoluso's Naturalization, 85 Atl., 149. (Supreme Court of Pennsylvania. July 2, 1912.)

Acts in naturalization proceedings are political, not judicial.

The admission of aliens to citizenship is not a judicial, but a political act, is not necessarily a business of the courts, and may be lodged by Congress in an executive department of the government, but the courts having been vested with the power to grant citizenship on proof to the satisfaction of the court, the exercise of that power is discretionary and not subject to review.

U. S. v. Dolla, 177 Fed., 101. (Circuit Court of Appeals, Fifth Circuit. March 1, 1910.)

Function, judicial.

The function of the court in a naturalization proceeding is judicial.

In re Bodek, 63 Fed., 815. (Circuit Court, E. D. Pennsylvania. October 11, 1894.)

Proceedings to be liberally construed.

In the exercise of naturalization jurisdiction the courts act judicially, and their proceedings are liberally construed, every intendment being in their favor.

In re Symanowsski, 168 Fed., 978. (Circuit Court, N. D. Illinois, E. D. March 29, 1909.)

DECLARATION OF INTENTION.

Nature of, not judicial.

The filing of a declaration of intention is not a judicial proceeding, nor is a declaration of intention a judicial instrument, and it cannot be amended *nunc pro tunc*.

In re Stack, 200 Fed., 330. (District Court, W. D. Missouri, W. D. October 2, 1912.)

Must be in conformity with law.

(Syllabus by the court.)

An alien applying under the present law for citizenship, must, irrespective of age, at least two years prior to his admission, declare his intention to become a citizen and renounce allegiance to any foreign prince, etc., generally, and particularly to the one of whom he may at the time of application be a subject, or a country of which he may be a citizen. A declaration of such nature is not sufficient unless it is by the alien himself in conformity with the law at the time it is made.

In re Poirot, 168 Fed., 456. (District Court, S. D. New York. January 27, 1909.)

Does not naturalize.

A declaration of intention is in no sense a complete and binding act, and carries no full rights of citizenship before naturalization.

In re Polsson, 159 Fed., 283. (Circuit Court, N. D. California. February 27, 1908.)

Same.

An alien who has never been naturalized as a citizen of the United States, is not a citizen by reason of having made declaration of his intention to become such.

Wallenburg v. Missouri Pac. Ry. Co., 159, Fed., 217. (Circuit Court, D. Nebraska. February 14, 1908.)

Does not require renunciation of allegiance.

Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), providing that aliens shall make declaration of their intention to become citizens of the United States two years at least before applying for naturalization, does not require a renunciation of allegiance to the foreign sovereign, or the actual declaration of allegiance to the United States, at the time the declaration of intention is made.

In re Symanowsski, 168 Fed. 978. (Circuit Court, N. D. Illinois, E. D. March 29, 1909.)

Absence of declaration from record of naturalization does not import invalidity.

A record of naturalization need not show jurisdiction, or that all the legal prerequisites have been complied with,

nor show the requisite previous declaration of intention to become a citizen, in order to import validity.

In re Symanowsski, 168 Fed., 978. (Circuit Court, N. D. Illinois, E. D. March 29, 1909.)

Same.

Where an alien twenty-five years of age was naturalized April 1, 1902, by a court of competent jurisdiction, and his certificate of naturalization recited that he had made his declaration if intention to become a citizen of the United States according to law, it should be accepted as a finding that all other requirements of the law necessary to sustain his application were complied with, and therefore the certificate of naturalization cannot be canceled on the ground that he did not make a declaration of intention two years before his admission to citizenship, the judgment of the court having been based upon a consideration of all the facts.

U. S. v. Nechman, 183 Fed., 788. (District Court, E. D. Michigan. May 12, 1910.)

Abandonment.

A declaration of intention to become a United States citizen made by an alien prior to returning to his native country, where he intended to remain and where he resumed his allegiance and asserted his right to citizenship, is thereby abandoned and will not support a petition for naturalization filed after his return to the United States.

In re Cameron, 165 Fed., 112. (District Court, E. D. Washington, S. D. October 28, 1908.)

Age of declaration—Less than two years old.

The act of June 29, 1906, c. 3592, Sec. 4, subd. 2, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), requires that an alien "shall make and file" his petition for naturalization "not less than two years nor more than seven years" after he has made such declaration of intention. This provision is mandatory, and the court has no jurisdiction of a petition for naturalization filed less than two years after the making of the declaration of intention, although the hearing thereon is not until after the expiration of the two years.

U. S. v. Van Der Molen, 163 Fed., 650. (District Court, W. D. Michigan, S. D. August 10, 1908.)

Age of declaration made prior to the enactment Act June 29, 1906.

The naturalization act of June 29, 1906, c. 3592, Sec. 4, subd. 2, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 528), which provides that petitions for naturalization shall be made and filed not more than seven years after the date of the declaration of intention, does not apply to aliens who declared their intention prior to the enactment of that statute.

Linger v. Balfour, 149 S. W., 795. (Court of Civil Appeals of Texas. March 30, 1912.)

Same.

A petition for naturalization made in the year 1907 under the provisions of the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420),

supported by a declaration of intention made under the provisions of the Act of Congress of April 4, 1802, c. 28, 2 Stat. 153, 155 (Rev. Stat. U. S., Sec. 2165 [U. S. Comp. St. 1901, p. 1329]), is not invalid because such declaration of intention was more than seven years old at the time of filing the petition.

In re Wehrli, 157 Fed., 938. (District Court, E. D. Arkansas, W. D. December 3, 1907.)

Same.

In my opinion * * * the true intent of Congress was that aliens declaring their intention to become naturalized after the passage of the act (naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 [U. S. Comp. St. Supp. 1907, p. 420]), must file their application within seven years after the filing of the declaration of intention, and as to those who filed the declaration of intention before the enactment of the statute they must make their final application within seven years from the enactment of the act.

Dicta In re Wehrli, 157 Fed., 938. (District Court, E. D. Arkansas, W. D. December 3, 1907.)

Containing name of wrong country and sovereign.

A declaration of intention to become a citizen of the United States which sets forth that the declarant is a native of France and intends to renounce allegiance, etc., to the Republic of France, when, in fact, he was a native of Russia and a subject of the Czar of Russia, is void.[1]

In re Lewkowicz, 169 Fed., 927. (District Court, S. D. New York. April 28, 1909.)

Same.

A declaration of intention to become a citizen of the United States made under the provisions of the Act of Congress of June 29, 1906, Sec. 4, subd. 1, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 528), which avers the place of birth of the declarant to have been Eisenberg, Germany, and that he intends to forever renounce allegiance particularly to "William II, Emperor of Germany, of which I am a subject," when in fact he was born in Eisenberg, Austria-Hungary, and was at the time of his attempted declaration a subject of the sovereign of that country, is void and not susceptible of amendment; and the hardship resulting to the declarant cannot be relieved against merely because it may appear that the error is clerical, and not his own.

In re Friedl, 202 Fed., 301. (District Court, E. D. Wisconsin. January 11, 1913.)

Same.

A declaration of intention to become a citizen of the United States which does not contain the name of the sovereign to whom the declarant owes allegiance, or the name of the country of which he is a subject, although the error was that of the clerk before whom the declaration was executed, does not comply with Rev. Stat. U. S., Sec. 2165 (U. S. Comp. St. 1901, p. 1329), requiring the declarant to state that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly, by name, to the prince, potentate, state or sovereignty of which he may be at the time a citizen or subject.[2]

Ex parte Lange, 197 Fed., 769. (District Court, E. D. Missouri, E. D. July 22, 1912.)

Failure to renounce allegiance particularly, by name, etc.

A declaration of intention to become a citizen of the United States made under Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), which contains a general renunciation of allegiance, but fails to renounce allegiance particularly, by name, to the prince, etc., to whom the declarant owes allegiance, is vitally defective, and cannot be amended.

In re Stack, 200 Fed., 330. (District Court, W. D. Missouri, W. D. October 2, 1912.)

Filed in fictitious or assumed name.

The naturalization act of June 29, 1906, c. 3592, Sec. 6, 34 Stat. 598 (U. S. Comp. St. Supp. 1911, p. 532), empowers the court to make a decree changing the name of an alien at the time of his admission to citizenship. The Penal Law (Act March 4, 1909, c. 321, 35 Stat. 1102 [U. S. Comp. St. Supp. 1911, p. 1611]), makes it an offense for any one to apply for naturalization in a fictitious or assumed name. *Held*, that where an alien made declaration of his intention in the name of Isaac Boorvis, and afterwards filed a petition to be made a citizen under his real name of Isaac Brody, he could not be allowed to amend the declaration of intention, but must file a new one in his right name.

In re Boorvis, 205 Fed., 401. (District Court, S. D. New York. May 5, 1913.)

Certified copy prima facie evidence of existence of original.

A certified transcript of a record, showing that the applicant had appeared before the clerk of the court and made declaration of intention to become a citizen of the United

States and to renounce his existing allegiance, certified the same day to be a full, true and complete transcript of the record as the same then remained in his office, duly attested with the seal of the court, should prevail over the testimony of a deputy clerk seven years later that he had made a thorough search and was unable to find such a record, and that the naturalization records of the court were very poorly kept.

U. S. v. Brelin, 166 Fed., 104. (Circuit Court of Appeals, Eighth Circuit. December 4, 1908.)

Same.

A certified copy of a record, by a public officer authorized to make it, not only vouches for its own correctness, but proves *prima facie* the original to have been in existence when it was made, an officer's certificate being accorded the sanctity of a deposition.

U. S. v. Brelin, 166 Fed., 104. (Circuit Court of Appeals, Eighth Circuit. December 4, 1908.)

Removal of naturalization records from clerk's office not authorized.

The clerk of the United States circuit court has no authority to remove the records of the court to a private residence and there take the alien's declaration of intention to become a citizen of the United States.

In re Langtry, 31 Fed., 879. (Circuit Court, D. California. July 19, 1887.)

See also, Santo Scola's Case, 8 Pa. Co. Ct. Rep., 344 (1890); Bosa's Application, 6 Kulp, 83 (1890), to the same effect.

Declaration need not be made in clerk's office.

The declaration of intention to become a citizen, provided for in Sec. 2165, U. S. Revised Statutes (U. S. Comp. St. 1901, p. 1329), need not be made in the office of the clerk of the court in which the same is filed. (Morse, J., dissenting.)

Andres v. Judge of Circuit Court, 43 N. W., 857, 77 Mich., 85, 6 L. R. A., 238. (Supreme Court of Michigan. October 25, 1889.)

Hawaii, residents of—Repeal.

The act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), to provide for a uniform rule for the naturalization of aliens throughout the United States, in section 26 thereof, repealed all acts or parts of acts inconsistent with, or repugnant to its provisions, including section 100 of the Organic Act of Hawaii (Act April 30, 1900, c. 339, 31 Stat. 161), providing that for the purposes of naturalization under the laws of the United States, residence in the Hawaiian Islands prior to the taking effect of this act shall be deemed equivalent to residence in the United States and in the territory of Hawaii, and the requirement of a previous declaration of intention to become a citizen of the United States and to renounce former allegiance shall not apply to persons who have resided in said islands at least five years prior to the taking effect of this act.

U. S. v. Rodiek, 162 Fed., 469. (Circuit Court of Appeals, Ninth Circuit. May 4, 1908.)

Declaration made by a minor under 2165 Rev. Stat. U. S., is valid.

A declaration of intention made by a minor who had reached years of discretion, under 2165 Rev. Stat. U. S.

(U. S. Comp. St. 1901, p. 1329), is a sufficient basis for a final adjudication under the provisions of the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478.)

In re Shapiro, 186 Fed. 606. (Circuit Court, D. Oregon. April 17, 1911.)

Same.

A declaration of intention to become a citizen of the United States by an alien who had reached years of discretion, but who had not attained his majority, is valid when made under Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), which requires that an alien shall declare his intention at least two years prior to his admission to citizenship, and a declaration so made by an alien 19 years old is sufficient.

U. S. v. George, 164 Fed., 45. (Circuit Court of Appeals, Second Circuit. May 5, 1908.)

Same.

Sec. 2167 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1332), providing that an alien who has resided in the United States for three years next preceding his arrival at the age of 21 years, may, under the conditions therein specified, be admitted to citizenship without having previously made a declaration of intention, does not imply that an alien shall in no instance be competent to declare his intention during minority.

In re Polsson, 159 Fed., 283. (Circuit Court, N. D. California. February 27, 1908.)

Same.

Under Rev. St. Sec. 2165 (U. S. Comp. St. 1901, p. 1329), a declaration of intention to become a citizen of the United States made by an alien minor of the age of 18 years and upwards is valid, and may be used in support of a petition for naturalization under the naturalization act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420).

In re Gross, 160 Fed. 739. (District Court, E. D. New York. February 17, 1908.)

Same—Ratification.

Inasmuch as at common law a minor could enter into any contract not expressly prohibited, and if ratified and confirmed by him at majority it became binding and obligatory and took effect as of the date of its execution, while a declaration of intention initiates important rights and obligations, they are admittedly more or less *inchoate* in character, and a declarant is not required or permitted to ratify or confirm his acts until after he has reached majority, there is nothing in the nature of a declaration of intention which on principle a minor should not be competent to make, so long as it appears that he is of sufficient age and understanding to appreciate the act.

In re Polsson, 159 Fed., 283. (Circuit Court, N. D. California. February 27, 1908.)

Same.

A declaration of intention to become a citizen of the United States under 2165 Rev. Stat. U. S. (U. S. Comp. St.

1901, p. 1329), may be made by a minor just before reaching the age of 21 years, and is ratified on filing a petition for naturalization after reaching his majority.

In re Symanowsski, 168 Fed., 978. (Circuit Court N. D. Illinois, E. D. March 29, 1909.)

Made by a minor under 2165 Rev. Stat. U. S., is void.

Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), which is general in its terms, and in the absence of Congressional enactment excepting minor aliens from its operation would authorize an alien to make a declaration of intention during minority, should be construed in connection with Sec. 2167 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1332), which contains an express exception to Sec. 2165, and is in effect a declaration by Congress that no step looking to the acquisition of citizenship shall be taken by an alien prior to the attainment of his majority.

In re Spitzer, 160 Fed., 137. (Circuit Court, N. D. Illinois, E. D. March 18, 1908.)

Minor son of deceased declarant need not declare intention.

An alien whose father declared his intention of becoming a citizen of the United States and died prior to September 26, 1906, before being naturalized and during the minority of the child, may be naturalized under act of June 29, 1906, Sec. 4, subd. 6, 34 Stat. 596, c. 3592 (U. S. Comp. St. Supp. 1907, p. 422), upon complying with the other provisions of the act, without making a declaration of intention.

In re Schmidt, 161 Fed., 231. (District Court, S. D. New York. February 5, 1908.)

Same.

The provisions of the naturalization act of June 29, 1906, c. 3592, Sec. 4, subd. 6, 34 Stat. 596 (U. S. Comp. St. Supp., 1907, p. 422), that when any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized, the widow and minor children of such alien may, by complying with the other provisions of this act, be naturalized without making any declaration of intention, is a re-enactment of Sec. 2168 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1332), which was repealed by the later statute, and the minor child of an alien who made a declaration of intention under Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), and died prior to the date when the act of June 29, 1906, went into effect, may, by complying with the other provisions of the new statute, be naturalized without making any declaration of intention.

In re Shearer, 158 Fed., 839. (District Court, E. D. Pennsylvania. January 20, 1908.)

Same—Stepchild.

The declaration of intention of a deceased stepfather inures to the benefit of, and gives an *inchoate* right to, a minor stepchild of the declarant, entitling him to apply for naturalization in his own behalf upon such declaration of intention under the act of June 29, 1906, c. 3592, Sec. 4, cl. 6, 34 Stat., 596 (U. S. Comp. St. Supp. 1909, p. 480), which provides that, when any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized, the widow and minor children of such alien may, by complying with the other provisions

of this act, be naturalized without making any declaration of intention.

In re Robertson, 179 Fed., 131. (District Court, M. D. Pennsylvania. February 17, 1910.)

Same—Time.

Where an alien declared his intention of becoming a citizen of the United States July 31, 1889, and died March 6, 1892, before being naturalized, his minor son, who came to the United States April 25, 1891, when between 9 and 10 years of age, may be naturalized pursuant to Sec. 2168 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1332), as amended by the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 480), providing that "when any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized, the widow and minor children of such alien may, by complying with the other provisions of this act, be naturalized without making any declaration of intention"; and the fact that he did not apply for naturalization until the expiration of six years and five months after reaching majority, and nine years and five months after he became eighteen, when he could first have taken the oaths, would be no bar to his naturalization.

U. S. v. Poslusny, 179 Fed., 836. (Circuit Court of Appeals, Second Circuit. June 14, 1910.)

Widow of deceased United States soldier must declare intention.

The act of June 29, 1906, c. 3592, Sec. 4, subd. 6, 34 Stat. 598 (U. S. Comp. St. Supp. 1907, p. 422), providing that

when any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized, the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaration, does not authorize the naturalization, without previous declaration of intention, of the widow of a deceased alien who had never made declaration of his intention, but who was an honorably discharged soldier, and entitled to admission under Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331).

U. S. v. Meyer, 170 Fed., 983. (District Court, E. D. Washington, S. D. May 27, 1909.)

Seamen—Certificate of discharge and good conduct.

Rev. Stat. Sec. 2174 (U. S. Comp. St. 1901, p. 1334), which provides that every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration to become a citizen, be admitted as a citizen of the United States, applies to seamen serving on American vessels engaged in trade on the Great Lakes; and where the petitioner for naturalization, a seaman, presents a declaration of intention made April 15, 1907, and five certificates of discharge made and signed by masters of American vessels and showing service on lake-going steamers for a period subsequent to the date of his declaration of intention aggre-

gating three years and nineteen days, and good conduct during that time, they are sufficient.[3]

In re Sutherland, 197 Fed., 841. (District Court, N. D. Ohio, E. D. March 28, 1912.)

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[1] The court said: "The declaration as drawn was a complete and intelligible document. It may not have been true—I do no think it was true—but such as it was it contained no clerical error, and it is going much too far to ask any court to correct the error of the applicant or his interpreter, and thus to manufacture an entirely new paper."

[2] Distinguished from Ex Parte Smith, 8 Blackf. (Ind.), 395, where the declaration of intention omitting the name of the sovereign, being described particularly as "the Queen of Great Britain and Ireland," was held to be a sufficient compliance with the Act of Congress, while in the case at bar the declaration of intention not only omits the name of the sovereign, but also the name of the country whose subject he is by nativity or naturalization.

[3] "Bearing in mind on June 22, 1874, the first revision of the general statutes was adopted by Congress (Revised Statutes 1874), and in that revision Section 29 of the Act of 1872 was taken therefrom and made a part of the title on 'Naturalization' as Section 2174 (R. S., tit. 30, 'Naturalization'), by the same revision all other provisions of the Act of 1872 were carried on into the Revised Statutes as part of Title 53, 'Merchant Seamen.' The effect of this revision was to repeal the Act of 1872 as it existed at the date of the Act of 1874. The act of revision (Rev. Stat., Sec. 5596, U. S. Comp. St., 1901, p. 3750), provided that all acts of Congress passed prior to the first day of December, 1873, 'any portion of which is embraced in any section of said revision, is hereby repealed, and the sections applicable thereto shall be in force in lieu thereof.' As a result of this legislation, Section 2174 became and has since remained a substantive feature of the naturalization laws, and, as no such restriction as that made by the Act of 1874 is to be found in such revision, the section is subject only to such limitation as is to be gathered from its own terms."

EVIDENCE.

Amendment of Record.

A record of naturalizaton cannot be corrected to show that the name of the person naturalized was other than that set forth therein in the absence of any entry or memorandum among the files of the court or in the office of the clerk by which the record can be corrected; and a certificate purporting to be a copy of the naturalization record, under the seal of the court and signed by the clerk, filed in support of the application, but which is not sustained by the record, is a nullity and cannot be used to correct the record.

In re O'Sullivan, 117 S. W., 651. (St. Louis Court of Appeals. Missouri. March 23, 1909.)

Certified copy of declaration of intention prima facie evidence of existence of original.

A certified transcript of a record, showing that the applicant had appeared before the clerk of the court and made declaration of intention to become a citizen of the United States and to renounce his existing allegiance, certified the same day to be a full, true and complete transcript of the record as the same then remained in his office, duly attested with the seal of the court, should prevail over the testimony of a deputy clerk seven years later that he had made a thorough seach and was unable to find such a

record, and that the naturalization records of the court were very poorly kept.

U. S. v. Brelin, 166 Fed., 104. (Circuit Court of Appeals, Eighth Circuit. December 4, 1908.)

Presumption—Rule of evidence.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), is not unconstitutional because it provides that the acquisition of a permanent residence abroad within five years after admission to citizenship shall be *prima facie* evidence of fraud, it being within the power of Congress to establish such a presumption as a rule of evidence.

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Burden of proof—Arrival.

In filing a petition for naturalization under the provisions of the act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), the petitioner must comply with section 4 of that act requiring that he shall state in his petition the name of the vessel upon which he came to the United States and the date of his arrival; and where the government proves *prima facie* that he did not arrive as alleged, the burden of proof is shifted to the petitioner, who must overcome such *prima facie* case by counterproof or explanation to the satisfaction of the court, and an explanation that he arrived under a fictitious name which he does not remember will not be accepted as satisfactory.

In re Kestelman, 165 Fed., 265. (Circuit Court, E. D. Pennsylvania. November 12, 1908.)

Absence, material only as evidence of intention.

The provisions of the Act of Congress of June 29, 1906, c. 3592, Sec. 4, par. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 531), providing that "it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least," does not mean that an alien seeking citizenship shall not leave the territorial limits of the United States within the period of five years preceding his application, but has reference to a change of domicile within that period, and the temporary absence of an alien in his native country, without any intention of abandoning his residence in the United States, will not defeat his right to naturalization; and the length of such absence is material only in its bearing on the question of intention.

U. S. v. Cantini, 199 Fed., 857. (District Court, W. D. Pennsylvania. October 8, 1912.)

Statements of consular officers.

The statements of United States consular officers in a foreign country to the effect that defendant has established a permanent residence abroad, are admissible in evidence in a proceeding to cancel a certificate of naturalization for fraud under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485).

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Residence—Age.

A petitioner for naturalization must prove the particular facts in respect to residence and age which Section 2167

U. S. Revised Statutes (Repealed, 34 Stat., p. 596 [U. S. Comp. St. Supp. 1907, p. 420]) requires to be established.

In re Bodek, 63 Fed., 815. (Circuit Court, E. D. Pennsylvania. October 11, 1894.)

Qualifications of petitioner for naturalization.

(Syllabus by the court.)

While great caution should be exercised in the examination of applicants for citizenship, yet no hard and fast rule can be laid down. Each case must depend largely upon its special facts. The practical test is whether the evidence, considered as a whole, justifies the conclusion that the applicant will make a good citizen. An applicant otherwise entitled to citizenship should not necessarily be denied the right because the evidence shows that he has no accurate knowledge of the Federal Constitution and form of government.

State ex rel. United States v. District Court of Seventeenth Dist., et al., 120 N. W., 898. (Supreme Court of Minnesota. April 23, 1909.)

Witnesses—Personal knowledge.

The naturalization act of June 29, 1906, c. 3592, Sec. 4, subd. 2, 34 Stat. 597 (U. S. Comp. St. Supp. 1907, p. 421), declares that an alien may be admitted to become a citizen of the United States in the following manner and not otherwise, and requires that a petition for naturalization shall be verified by at least two credible witnesses, who shall state that they have personally known the applicant

to be a resident of the United States for a period of at least five years continuously * * * and that they each have personal knowledge that the petitioner is a person of good moral character and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States; and where the two verifying witnesses are the uncle and aunt of the petitioner, who came to this country before the petitioner was born, and who never saw or knew him personally until about two years previous to the filing of the petition, although they had learned, through correspondence from relatives and from the petitioner, that he had come to the United States and was residing at Philadelphia, they are unable to truthfully state that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and he cannot be admitted.[1]

In re Toomey, 111 N. Y. Supp., 600, and 145 N. Y. St. Rep. (Supreme Court, Special Term, Erie County. February, 1908.)

Soldiers—Degree of proof.

The naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), does not affect the provisions of Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331), requiring proof of residence and good moral character "as now provided by law," and an alien who is an honorably discharged soldier of the United States may be admitted a citizen thereunder with the degree of proof required by Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1330).[2]

In re Loftus, 165 Fed., 1002. (Circuit Court, S. D. New York. December 14, 1908.)

Depositions, when admissible.

Under the act of June 29, 1906, c. 3592, Sec. 9, 34 Stat. 599 (U. S. Comp. St. Supp. 1907, p. 424), which requires that the hearing on a petition for naturalization shall be in open court, and that the applicant and witnesses shall be examined before the court and in the presence of the court, the court has no authority to receive and consider evidence taken by deposition, except as provided in section 10, permitting proof by deposition where the applicant has resided in the State for a period of less than five years.

U. S. v. Nisbet, 168 Fed., 1005. (District Court, W. D. Washington, N. D. March 31, 1909.)

Same.

The act of June 29, 1906, c. 3592, Sec. 9, 34 Stat. 599 (U. S. Comp. St. Supp. 1911, p. 533), which provides that every final hearing upon a petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon the record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court, is mandatory, and, except as provided in section 10, the court is not authorized to receive or consider evidence taken by deposition.

U. S. v. Kolodner, 199 Fed., 809. (District Court, M. D. Pennsylvania. October 26, 1912.)

"District," construed to mean Federal Judicial District.

The act of June 29, 1906, c. 3592, Sec. 10, 34 Stat. 599 (U. S. Comp. St. Supp. 1911, p. 533), provides that in case

the petitioner has not resided in the State, Territory or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the State, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States Attorney for the district in which said witnesses may reside. *Held,* that the word "district" refers to the territorial jurisdiction of the federal courts, not to the District of Columbia, and where a petitioner for naturalization has not resided five years continuously within the federal judicial district where he applies for naturalization, but has resided therein for one year continuously immediately preceding the date of his application, proof by deposition may be submitted to establish the additional period necessary to make up five years' residence in the United States.

(Reversed) U. S. v. Kolodner, 199 Fed., 809. (District Court, M. D. Pennsylvania. October 26, 1912.)

"District," construed to mean District of Columbia.

The act of June 29, 1906, c. 3592, Sec. 3, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 529), confers jurisdiction to naturalize aliens upon certain federal and state courts, and the Supreme Court of the District of Columbia. Section 4, sub-division 2, provides that the applicant must have been a resident of the United States for five years, and of the State, Territory or district in which the application is

made for one year, immediately preceding the date of the petition. Section 9 provides that every final hearing on a petition for naturalization shall be had in open court before the judge, and that the applicant and witnesses shall be examined under oath before the court and in the presence of the court. Section 10 provides that in case the petitioner has not resided in the State, Territory or district for five years, he may establish the time of his residence within the State by two witnesses, both in his petition and at the final hearing, and the remaining portion of the five years' residence required by law to be established may be proved by deposition. *Held,* that the word "district" used in conjunction with the words "State" and "Territory" in sections 4 and 10, refers to the District of Columbia, and not to the judicial district in which the petition is filed, and a petitioner who has resided within the State, but not within the judicial district, for a period of five years, cannot establish a part of the requisite period of residence by deposition.

U. S. v. Kolodner, 204 Fed., 240. (Circuit Court of Appeals, Third Circuit. April 17, 1913.)

Reversing U. S. v. Kolodner, 199 Fed., 809, *supra.*

Soldiers may prove residence by deposition.

An honorably discharged United States soldier applying for naturalization under Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331), need not prove one year's residence in the state in which the petition is filed; and proof of residence in the United States for one year prior to his application may be made by deposition, section 10 of the naturalization act of June 29, 1906, c. 3592, 34 Stat. 599 (U. S. Comp. St. Supp. 1909, p. 482), being broad enough

to allow depositions to be taken outside of the state whenever it is essential to prove residence beyond the state.

In re McNabb, 175 Fed., 511. (District Court, D. Oregon. December 6, 1909.)

Evidence of Naturalization.

(Syllabus by the court.)

Where no record of naturalization can be produced, evidence that a person having the requisite qualifications to become a citizen did in fact vote and hold office is sufficient to warrant the inference that he had been duly naturalized. (Boyd v. Nebraska, 143 U. S., 135, 12 Sup. Ct., 375, 36 L. Ed., 103, followed.)

Conover v. Old, 77 Atl., 1070. (Supreme Court of New Jersey. Argued June term, 1910.)

Same—Secondary Evidence.

(Syllabus by the court.)

Before proof outside the record of naturalization can be resorted to, some excuse must appear for the substitution of secondary evidence for the documentary proof.

Conover v. Old, 77 Atl., 1070. (Supreme Court of New Jersey. Argued June term, 1910.)

Same.

(Syllabus by the court.)

The extreme youth of the respondent at the time of his father's naturalization, the fact that they lived together

but little and were at one time alienated from each other, that the father's naturalization was in a distant state and at an unknown place, and that there were other children who might have the custody of the father's certificate of naturalization, are sufficient to excuse the production of documentary proof of the fact of naturalization.

Conover v. Old, 77 Atl., 1070. (Supreme Court of New Jersey. Argued June term, 1910.)

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[1] "Information gained by correspondence from others, or even from the applicant, does not, in our opinion, meet the plain intent of the statute."

[2] "The section does not say that the proof of residence and character shall be as provided by law, or as now or hereafter provided by law, but as now provided by law. Effect should be given to the word 'now' if possible, and this can be done by treating the law existing in 1862 upon these points as incorporated under Section 2166, notwithstanding the fact that the general naturalization act of 1802, of which they were a part, has been repealed. All the other provisions of the Act of 1906, not being otherwise expressly regulated in the section, will be applicable to honorably discharged soldiers, viz.: the form and contents of the petition, the oath in open court, the public notice of the petition and hearing on a stated day, not less than ninety days after filing, the exclusion of anarchists and polygamists, etc."

GOOD MORAL CHARACTER.

Character defined.

Character is what a person is, while reputation is what he is supposed to be. "Character consists of the qualities which constitute the individual; reputation the sum of opinions entertained concerning him. The former is interior; the latter external. The one is the substance; the other the shadow."

U. S. v. Hrasky, 88 N. E., 1031, 240 Ill., 560. (Supreme Court of Illinois. April, 1909.)

What constitutes good moral character.

An alien whose moral character measures up to the standard of the average person of the community in which he lives is of good moral character within the provisions of the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), requiring a finding that the applicant for citizenship shall have behaved as a man of good moral character.

In re Hopp, 179 Fed., 561. (District Court, E. D. Wisconsin. May 28, 1910.)

Same—Perjury.

What constitutes good moral character may vary in some respects in different times and places, but a person who commits

perjury does not behave as a man of good moral character and is not, therefore, entitled to admission to citizenship.

In re Spenser, 5 Sawyer (U. S.), 195. (Circuit Court, District of Oregon. July 8, 1878.)

Perjury.

An alien naturalized in October, 1904, after a residence in the United States of five years, but upon the false statement that he was less than 18 years of age upon arrival, who voluntarily surrendered his certificate of naturalization in October, 1904, and who, presumably because of ignorance of English, and the circumstances surrounding the making of a subsequent petition for naturalization, failed to set forth therein that he had previously been in possession of a naturalization certificate, will be allowed to make a new petition setting forth the exact facts, for which purpose his record of good moral character would seem to be sufficient.

In re Argento, 159 Fed., 498. (District Court, E. D. New York. January 28, 1908.)

Same.

Where an alien, in his petition for naturalization, misnamed one of his children and gave her residence as Providence, when in fact she had never been in the United States, but it did not appear that an attempt was made to conceal the identity or parentage of such child when she came to this country, this discrepancy does not amount to evidence of such a lack of good moral character as to justify denial of the petition on that ground alone.

In re Camaras, 202 Fed., 1019. (District Court, D. Rhode Island. February 19, 1913.)

Same.

A naturalization proceeding is not adversary, but essentially *ex parte,* and it is the duty of the applicant to make full and true disclosure of his qualifications; and a certificate of naturalization granted to an alien who stated in his petition for naturalization that he was unmarried, when he in fact had a wife and children in his native country whom he had deserted, is subject to cancellation on the ground of fraud.

U. S. v. Albertini, 206 Fed., 133. (District Court, D. Montana. May 28, 1913.)

Willful disregard of law—Perjury.

An alien who filed a petition for naturalization verified by a saloonkeeper, in which he stated that he was a clerk, and it is shown at the final hearing thereon that he was a bartender in the witness' saloon, and had within the past five years been found guilty of violating the liquor laws of the State of Kansas, and was arrested for selling liquor in violation of an injunction and sentenced to 30 days in jail and to pay a fine of $100, following which conviction he was paroled, and that the parole had terminated, not only exhibited a willful disregard of the laws of the State, but of the orders of the court, and is not well disposed to the good order and happiness flowing from attachment to the principles of the Constitution of the United States, and is not entitled to naturalization under the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 529), requiring that during the five years prior to the filing of the petition the applicant shall have behaved as a man of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the same.

In re Trum, 199 Fed., 361. (District Court, W. D. Missouri, W. D. October 2, 1912.)

Violation of law requiring saloon to be closed Sundays.

An alien who is in the saloon business, and had known for more than two years that the laws of the State required the closing of saloons on Sunday, but nevertheless regularly kept the back door of his saloon open on that day, and who states that although he should take the oath to support the United States Constitution and laws, would continue to do so, is not eligible to naturalization under the provisions of the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), which provides that it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state one year at least, and that during that time he has behaved as a man of good moral chracter, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

U. S. v. Hrasky, 88 N. E., 1031, 240 Ill., 560. (Supreme Court of Illinois. April, 1909.)

Same.

An applicant for citizenship who, in violation of the state Sunday closing act, keeps his saloon open Sundays, does not show a want of the requisite good moral character required by the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), where it is shown that the law has never been enforced because of adverse public sentiment, and he is willing to comply with the law if insisted upon by the proper authorities. (U. S. v. Hrasky, *supra*, distinguished.)

In re Hopp, 179 Fed., 561. (District Court, E. D. Wisconsin. May 28, 1910.)

False answers to chief naturalization examiner during investigation.

Under the act of June 29, 1906, c. 3592, Sec. 4, Subd. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 531), which provides that it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, an alien whose petition for naturalization was denied because he falsely answered inquiries made by the Chief Naturalization Examiner during an investigation of the application, will be denied naturalization on a subsequent petition filed within five years after the date of the offense, as he cannot be said to have behaved as a man of good moral character.

In re Talarico, 197 Fed., 1018. (District Court, W. D. Pennsylvania. July 6, 1912.)

Second degree murder.

An alien who pleaded guilty to murder in the second degree will not be admitted to citizenship, although his conduct before, and for more than five years since, the commission of the crime reveals no cause for censure.

In re Ross, 188 Fed., 685. (Circuit Court, M. D. Pennsylvania. July 29, 1911.)

Drunkenness.

A certificate of naturalization which might immediately be obtained anew will not be canceled on the ground that the

holder had not for five years immediately preceding the date of his application for citizenship behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, where it is shown that he was convicted of drunkenness fifteen times during the ten years prior to the five-year period, and once thereafter, but had reformed and remained sober for more than four and one-half years prior to the filing of his petition for naturalization.

U. S. v. Dwyer, 170 Fed., 686. (Circuit Court, D. Massachusetts. May 18, 1909.)

Use of illegal certificate of naturalization.

(On motion for leave to file a petition for naturalization.)

A man cannot be considered to have behaved as a person of good moral character within the meaning of the Naturalization Act of June 29, 1906, c. 3592, Sec. 4, Subd. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 422), when knowingly and wilfully making a fraudulent or criminal use of a certificate of naturalization issued to him after learning that he was not entitled to the same; and he can not claim a return to a proper moral standard and the beginning of the statutory five-year period during which good moral character must be shown until such fraudulent or criminal use has entirely ceased.

In re Di Clerico, 158 Fed., 905. (District Court, E. D. New York. January 28, 1908.)

Term of good moral character—Act involving moral turpitude.

(On motion for leave to file a petition for naturalization.)

Under the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), an alien who, in 1905, pleaded guilty to a charge involving moral turpitude

(sentence suspended) and filed an application for naturalization in 1907, which was denied on the ground that he had not behaved as a man of good moral character during the statutory five-year period, should not be permitted to file another application for naturalization until the cause of the denial of his previous petition has been cured or removed by a lapse of five years after his plea of guilty.

In re Guliano, 156 Fed., 420. (District Court, S. D. New York. October 15, 1907.)

Petitioner's testimony.

The good moral character of a petitioner for naturalization must be competently established, and for this purpose the petitioner's testimony is of little or no weight.

In re Bodek, 63 Fed., 815. (Circuit Court, E. D. Pennsylvania. October 11, 1894.)

Pardon, effect of—Not retrospective.

A pardon is prospective and not retrospective in its operation; and while it absolves the offender from the guilt of his offense and relieves him from the legal disabilities consequent thereon, it does not obliterate or wipe out the fact of the commission of the crime, so that it cannot be made to appear on an application to be admitted to citizenship.

In re Spenser, 5 Sawyer (U. S.), 195. (Circuit Court, District of Oregon. July 8, 1878.)

Judicial discretion.

In a petition for naturalization the court must determine, taking into account the whole career of the applicant, whether he possesses the necessary qualifications for citizenship, and

where it appears that the applicant has not behaved as a man of good moral character while in the United States, the court, in the exercise of a sound discretion, may refuse his petition, notwithstanding his good behavior during the preceding five years.

In re Ross, 188 Fed., 685. (Circuit Court, M. D. Pennsylvania. July 29, 1911.)

JUDGMENTS.

Nature of judgment granting citizenship.

An order admitting to citizenship, being a judgment with the ordinary attributes of a court of record importing verity, is as conclusive as such judgments.

U. S. v. Aakervik, 180 Fed., 137. (District Court, D. Oregon. June 20, 1910.)

Characteristics of judgment granting citizenship.

An order of a court of competent jurisdiction admitting an alien to citizenship is a judgment, possessing all the characteristics of an ordinary judgment.

In re Tinn, 84 Pac., 152. (Supreme Court of California. March 14, 1906.)

What constitute judgments—Entitled to record when duly pronounced—Directory provisions of statute.

The judgment of a court is its pronouncement from the bench, the written fact is but the evidence of what the court has decided, and the requirement that the judge sign it is directory. Judgments duly pronounced, but not entered, are entitled to record.

U. S. v. Stoller, 180 Fed., 910. (District Court, E. D. Washington, E. D. July 8, 1910.)

Time of taking effect.

A judgment or decree becomes a finality as to the parties and their privies on failure to initiate proceedings for review within the term fixed by law.

U. S. v. Aakervik, 180 Fed., 137. (District Court, D. Oregon. June 20, 1910.)

Record must show existence of jurisdictional facts.

Jurisdiction to naturalize aliens is conferred by statute and must be exercised in a special and summary manner; and a judgment in a naturalization proceeding can only be supported by a record which shows the existence of facts necessary to confer jurisdiction.

Ex parte Lange, 197 Fed., 769. (District Court, E. D. Missouri, E. D. July 22, 1912.)

Construction of record.

Where an alien twenty-five years of age was naturalized April 1, 1902, by a court of competent jurisdiction, and his certificate of naturalization recited that he had made his declaration of intention to become a citizen of the United States according to law, it should be accepted as a finding that all other requirements of the law necessary to sustain his application were complied with, and therefore the certificate of naturalization cannot be canceled on the ground that he did not make a declaration of intention two years before his admission to citizenship, the judgment of the court having been based upon a consideration of all the facts.

U. S. v. Nechman, 183 Fed., 788. (District Court, E. D. Michigan. May 12, 1910.)

Same—Clerk's omission or inadvertence.

Every reasonable intendment of construction should be applied to give effect to a record of naturalization as would be allowed to sustain a record in ordinary cases; and an alien who has complied with all the requirements of the Act of Congress of April 14, 1802, c. 28, Secs. 1, 3, 2 Stat. 153, 155 (Rev. St. U. S., Sec. 2165 [U. S. Comp. St. 1901, p. 1329]), should not be deprived of his privileges on account of some immaterial omission or inadvertence of a clerk in making up the record.

City of Rockland v. Inhabitants if Hurricane Isle, 76 Atl., 286. (Supreme Judicial Court of Maine. November 27, 1909.)

Validity—Legal prerequisites—Declaration of intention.

A record of naturalizaton need not show jurisdiction or that all the legal prerequisites have been complied with, nor show the requisite previous declaration of intention to become a citizen, in order to import validity.

In re Symanowsski, 168 Fed., 978. (Circuit Court, N. D. Illinois, E. D. March 29, 1909.)

Same—Recording.

Under the Act of Congress of April 14, 1802, c. 28, Secs. 1, 3, 2 Stat. 153, 155 (Rev. St. U. S. Sec. 2165 [U. S. Comp. St. 1901, p. 1329]), the court has power to confer or deny citizenship, depending upon whether or not the essential facts are proved, and, in either event, the judgment is valid and should be recorded.

City of Rockland v. Inhabitants of Hurricane Isle, 76 Atl., 286. (Supreme Judicial Court of Maine. November 27, 1909.)

Not void for non-compliance with directory provisions of statute.

The provisions of the act of June 29, 1906, c. 3592, Sec. 4, subd. 2, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), requiring a petition for naturalization to be filed in duplicate, is directory, and the failure to so file the petition does not render nugatory the judgment of the court admitting the applicant to citizenship.

U. S. v. Stoller, 180 Fed., 910. (District Court, E. D. Washington, E. D. July 8, 1910.)

Res Judicata—Estoppel by judgment—Judgments procured ex parte not conclusive.

The foundation of the doctrine of *res judicata*, or estoppel by judgment, is that both parties have had their day in court, and a certificate of naturalization procured *ex parte* is not entitled to conclusive effect against the public, and is open like other public grants to be revoked if found to have been unlawfully or fraudulently procured.

Johannessen v. United States, 32 S. Ct., 613, 225 U. S., 227, 56 L. Ed., 1066. (No. 230. Submitted April 12, 1912.—Decided May 27, 1912.)

MARINES.

Posting notice.

There is no repugnance between the act of July 26, 1894, c. 165, 28 Stat. 124 (U. S. Comp. St. 1901, p. 1332), providing for the naturalization of any alien who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, without any previous declaration of intention of becoming a citizen of the United States upon proof of good moral character and honorable discharge from the United States Navy or Marine Corps, and the act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), providing for a uniform rule for the naturalization of aliens throughout the United States, and the provision in the latter act requiring notice of a petition for naturalization to be posted for ninety days prior to the final hearing thereon is applicable to petitions filed under the act of July 26, 1894.

U. S. v. Peterson, 182 Fed., 289. (Circuit Court of Appeals, Eighth Circuit. October 11, 1910.)

Term of enlistment—Disability, discharge for before expiration of term of enlistment.

An alien who enlisted in the United States Marine Corps and was honorably discharged therefrom for physical dis-

ability before the expiration of his term of service, is not entitled to naturalization without having previously declared his intention of becoming a citizen of the United States, upon proof of good moral character and honorable discharge, under the act of July 26, 1894, c. 165, 28 Stat. 124 (U. S. Comp. St. 1901, p. 1332), as amended by the Naval Appropriation Act March 3, 1901, c. 852, 31 Stat. 1132 (U. S. Comp. St. 1901, p. 1095), providing that any alien of the age of twenty-one years and upwards who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such.

U. S. v. Plaistow, 189 Fed., 1006. (District Court, W. D. New York. August 2, 1910.)

Japanese Marine not eligible to naturalization.

An alien of the Japanese race is not eligible to naturalization under the provisions of the Act of Congress of July 26, 1894, 28 Stat. 124, c. 165 (U. S. Comp. St., 1901, p. 1332).

Bessho v. U. S., 178 Feb., 245. (Circuit Court of Appeals, Fourth Circuit. February 1, 1910.)

NATURALIZATION.

Naturalization is a political, not a judicial act, and may be vested by Congress in an executive department of the government.

The admission of aliens to citizenship is not a judicial, but a political act, is not necessarily a business of the courts, and may be lodged by Congress in an executive department of the government, but the courts having been vested with the power to grant citizenship on proof to the satisfaction of the court, the exercise of that power is discretionary and not subject to review.

U. S. v. Dolla, 177 Fed., 101. (Circuit Court of Appeals, Fifth Circuit. March 1, 1910.)

Uniform rule of naturalization.

Under Consti. U. S., Art. 1, Sec. 8, giving Congress power to establish a uniform rule of naturalization and to make all laws necessary and proper for carrying the power into execution, Congress has exclusive jurisdiction over the subject of naturalization.

Inhabitants of Hampden County v. Morris, 93 N. E., 579, 207 Mass., 167. (Supreme Judicial Court of Massachusetts. January 2, 1911.)

Same.

Every state has, in general, the right to prescribe the terms upon which it will admit aliens to citizenship, and compliance with these terms is a condition precedent to the power of the court to enter its decree.

In re Trum, 199 Fed., 361. (District Court, W. D. Missouri, W. D. October 2, 1912.)

Same.

Naturalization is a matter of statute, which is of uniform application, and should have uniform construction throughout all the states.

In re Rousos, 119 N. Y. Supp., 34. (Supreme Court. Special Term. Monroe County. September 28, 1909.)

Same.

The Congress of the United States has exclusive power to provide for naturalization, and is required to establish a uniform rule for all states. Naturalization is therefore a national right and privilege rather than a state right.

Dicta in Gardina v. Board of Registrars of Jefferson County, 48 So., 788. (Supreme Court of Alabama. February 2, 1909.)

Re-naturalization.

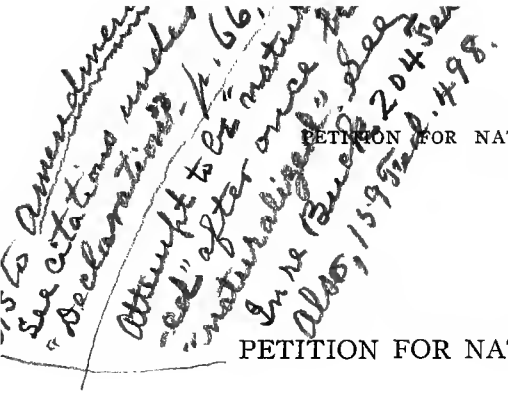
The naturalization laws of the United States apply only to aliens.

Dicta In re Alverto, 198 Fed., 688. (District Court, E. D. Pennsylvania. September 24, 1912.)

Same—Restoration of records.

The naturalization laws of the United States apply only to aliens, and not to citizens, hence an alien who has been naturalized by a court of competent jurisdiction, and therefore ceased to be an alien, but who is unable to prove his citizenship by reason of the loss of his certificate and the destruction of the records of the court in which he was naturalized, is not entitled to re-naturalization in order that he may have evidence of his citizenship, his remedy being by proceeding in that court to restore the record.

In re Buck, 204 Fed., 701. (District Court, E. D. Arkansas, E. D. May 6, 1913.)



PETITION FOR NATURALIZATION.

Nature of petition for naturalization—Facts—Evidence.

An applicant for naturalization is a suitor, who, by his petition, institutes a proceeding in a court of justice for the judicial determination of an asserted right, and such petition must allege the existence of all facts, and the fulfillment of all conditions, upon the existence and fulfillment of which the statutes which confer the right asserted have made it dependent, and must be supported by evidence to establish its material allegations.

In re Bodek, 63 Fed., 815. (Circuit Court, E. D. Pennsylvania. October 11, 1894.)

Adjudication of petition for naturalization—Recording judgment.

Petitions must be filed at or before the time of their presentation, and the judgment upon them will be formally entered, as well in cases where it is adverse as in those in which it is favorable to the petitioner.

In re Bodek, 63 Fed., 815. (Circuit Court, E. D. Pennsylvania. October 11, 1894.)

Filing petition for naturalization—Duty of Clerk.

The clerks of federal courts are not subject to instruction by district attorneys, or by the United States itself, as a party to

a judicial proceeding, but it is their duty to file petitions for naturalization which contain all proper allegations, though in their judgment the petitioner is not eligible to naturalization as a citizen of the United States because of race, color, or other disqualification.

In re Halladjian, et al., 174 Fed., 834. (Circuit Court, D. Massachusetts. December 24, 1909.)

Same.

Act June 29, 1906, c. 3592, Sec. 3, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), is mandatory upon clerks of United States courts in requiring them to receive, file and enter applications for citizenship immediately upon receipt thereof.

Marvin v. U. S., 45 Ct. Cl., 528.

Receiving and entering petition for naturalization—Basis.

Cases involving the naturalization of aliens are placed by statute on the same footing as bankruptcy proceedings and chancery and admiralty business, so far as receiving and entering the petitions are involved.

Marvin v. U. S., 45 Ct. Cl., 528.

Refiling petition for naturalization.

Where a petition for naturalization is defective in that one of the verifying witnesses is disqualified because not a citizen of the United States, it would be more orderly for the clerk to refile the petition and give it a new consecutive number upon the records than to permit its amendment by the substi-

tution of a competent witness and redating the witnesses' affidavit, but the absence of a filing endorsement or calendar entry by the clerk with reference to a petition which is actually filed, and upon which the clerk has acted, is immaterial, if the fact of filing sufficiently appears.

U. S. v. Erickson, 188 Fed., 747. (District Court, W. D. Michigan. S. D. September 28, 1910.)

Motion for leave to file petition for naturalization.

An alien who is in doubt regarding his right to naturalization under the provisions of the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), may have the matter determined on motion for leave to file a petition for naturalization, upon notice to the United States attorney for the appropriate district.

In re Guliano, 156 Fed., 420. (District Court, S. D. New York. October 15, 1907.)

Chronological filing of petitions for naturalization—materiality.

The provisions of Sec. 14 of the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), providing that declarations of intention and petitions for naturalization shall be bound in chronological order, merely define the duties of the officers having such matters in charge, and if they have so prepared and bound the applications that the provisions of the section cannot be observed it should not affect the right of the applicant, who has complied with all the formalities of law and has shown himself entitled to admission. The privileges given him by statute should not be made subservient to mere matters of form.

Dicta In re Freeze, 189 Fed., 1022. (District Court, D. Oregon. September 4, 1911.)

Duplicate filing—Judgments not void for non-compliance with directory provisions of statute.

The provisions of the act of June 29, 1906, c. 3592, Sec. 4, Subd. 2, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), requiring a petition for naturalization to be filed in duplicate, is directory, and the failure to so file the petition does not render nugatory the judgment of the court admitting the applicant to citizenship.

U. S. v. Stoller, 180 Fed., 910. (District Court, E. D. Washington, E. D. July 8, 1910.)

Signature to petition for naturalization.

A petition for naturalization filed under the act of June 29, 1906, 34 Stat. 596, c. 3592 (U. S. Comp. St. Supp. 1907, p. 420), supported by a declaration of intention filed during the ninety days between the passage of that act and the date it became effective, must be signed by the applicant in his own handwriting.[1]

In re Martinovsky, 171 Fed., 601. (District Court, W. D. Pennsylvania. July 13, 1909.)

Verification of petition for naturalization by one witness on one day and by another witness on the following day.

A petition for naturalization under the provisions of the naturalization act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), signed and verified by the petitioner and one witness on one day and by another witness on the following day, is valid, the same having been filed on the day when signed and verified by the second witness and notice duly posted by the clerk.

In re Freeze, 189 Fed., 1022. (District Court, D. Oregon. September 4, 1911.)

Verification of petition for naturalization—Number of witnesses.

While the affidavit of verifying witnesses to a petition for naturalization under the provisions of the naturalization act of June 29, 1906, c. 3592, Sec. 4, Subd. 2, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), must show the requisite period of residence of the petitioner, such showing need not be made by the same witnesses as to the entire period, and so long as there are at least two credible witnesses testifying as to each fraction of such period so as to cover the whole, the requirement of the statute is satisfied.

In re Godlover, 181 Fed., 731. (Circuit Court, N. D. California. September 20, 1910.)

Soldier's petition for naturalization does not require verification.

The petition for naturalization of an honorably discharged United States soldier under Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331), need not be verified by two witnesses, as provided by the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), the phrase "as now provided by law," contained in Sec. 2166, having reference to statutes in existence at the time of its enactment.

In re McNabb, 175 Fed., 511. (District Court, D. Oregon. December 6, 1909.)

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[1] "It is true that the thirty-first section of the act provides that the act shall take effect and be in force from and after ninety days from the date of its passage, with the proviso that certain sections, not including Section 4, shall go into effect immediately upon the passage of the act; and it is true that the declaration of the applicant's intention was made within the ninety days from the date of the pas-

sage of the act. But the act clearly means what it says, and that the declaration of intention was made before the act should take effect, but subsequent to its passage, is no reason why the provisions of the act should be ignored."

RESIDENCE.

Residence abroad—Intention, determined by acts rather than declarations.

While an alien's residence under Rev. Stat. U. S., Sec. 2170 (U. S. Comp. St. 1901, p. 1333), which required an applicant for citizenship to have resided in the United States for the continued term of five years next preceding his admission to citizenship, depends largely upon intention, such intention is to be gathered from his acts rather than from his declarations.

U. S. v. Aakervik, 180 Fed., 137. (District Court, D. Oregon. June 20, 1910.)

Residence abroad after naturalization—How determined—Intention.

Residence is not determined by defendant's expression of a definite desire to retain his residence in the United States, but by his physical residence in the foreign country, coupled with his intention to remain there for an indefinite period.

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Same.

Where a person's intention to reside abroad is limited to a period itself determined by some definite event, even though the occurrence of that event may be uncertain, he has not

the requisite intention to establish a new domicile, and this is particularly true where a person goes abroad to remain until he is restored to health, in which case he has no intention of indefinite residence; but if he does not expect to return at all he will lose his original domicile, even though due to the fact that he cannot live in the country from which he came.

U. S. v. Luria, 184 Fed., 643. (District Court, S. D. New York. January 27, 1911.)

Same.

In a proceeding to cancel a certificate of naturalization under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), a decree is authorized where it is shown that the alien was naturalized August 11, 1899, arrived in South Africa November 23d of the same year, and engaged in business there, where he continued to reside until after March 11, 1910, when a suit was instituted to cancel his certificate of citizenship, it further appearing that he had stated to the United States consul that he did not know when he could return to the United States, that he was not engaged solely as a representative of American trade and commerce, that his residence abroad was not for reasons of health or education, and that no controlling exigency beyond his power to foresee had prevented him from carrying out a *bona fide* intention of returning to the United States.

U. S. v. Ellis, 185 Fed., 546. (Circuit Court, E. D. Louisiana, New Orleans Division. March 3, 1911.)

Continuous residence.

Under Rev. Stat., Sec. 2170 (U. S. Comp. St. 1901, p. 1333), which required that no alien shall be admitted to become a citizen who has not for a continued term of five years next

preceding his admission resided within the United States, an alien who left the United States and returned to his native country, where his family always lived, resumed his regular occupation and remained there four and one-half years, cannot claim to have been a resident of the United States while so absent.

U. S. v. Aakervik, 180 Fed., 137. (District Court, D. Oregon. June 20, 1910.)

Same.

The act of June 29, 1906, c. 3592, Sec. 4, Subd. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 422), which requires that it shall be made to appear to the satisfaction of the court admitting an alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state or territory where such court is at the time held one year at least, the word "continuously" is not to be construed literally, the word "residence" being used in the sense of domicile, and a sailor who has acquired a domicile does not abandon it by going to sea in the course of his employment.

In re Schneider, 164 Fed., 335. (Circuit Court, S. D. New York. October 2, 1908.)

Continuous residence—Physical absence—Fraud—Illegality.

The residence in the United States for a period of at least five years, required as a prerequisite to naturalization under the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 422), is broken by the physical absence of the alien from the United States for seven months, during which time he obtained admission to another allegiance; and his certificate of naturalization as

a citizen of the United States granted under these conditions was fraudulently or illegally procured, and subject to cancellation on either ground.

U. S. v. Simon, 170 Fed., 680. (Circuit Court, D. Massachusetts. May 25, 1909.)

Same—Temporary absence, length of material only as evidence of intention.

The provisions of the act of Congress of June 29, 1906, c. 3592, Sec. 4, par. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 531), providing that "it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least," does not mean that an alien seeking citizenship shall not leave the territorial limits of the United States within the period of five years preceding his application, but has reference to a change of domicile within that period, and the temporary absence of an alien in his native country, without any intention of abandoning his residence in the United States, will not defeat his right to naturalization; and the length of such absence is material only in its bearing on the question of intention.

U. S. v. Cantini, 199 Fed., 857. (District Court, W. D. Pennsylvania. October 8, 1912.)

Five years' residence in the United States—Fraud—Illegality.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), which authorizes a suit by the United States to cancel a certificate of naturalization on the ground of fraud or that it was illegally procured, is constitutional, and the United States may main-

tain a suit thereunder in a federal court to cancel a certificate issued by a state court under that act or former statutes, on the ground of fraud, in that the allegation and evidence that the applicant had resided in the United States five years was untrue.

U. S. v. Spohrer, 175 Fed., 440. (Circuit Court, D. New Jersey. January 14, 1910.)

Same—Intention—Protection abroad.

A certificate of naturalization granted to an alien who had not been a *bona fide* resident of the United States for five years before his admission to citizenship, and who did not, at the time of naturalization, intend to become a resident of the United States, but desired a certificate to secure protection abroad, will be canceled for fraud.

U. S. v. Mansour, 170 Fed., 671. (District Court, S. D. New York. August 18, 1908.)

Petitioner's testimony as to residence.

The residence of a petitioner for naturalization must be competently established, and for this purpose the petitioner's testimony is of little or no weight.

In re Bodek, 63 Fed., 815. (Circuit Court, E. D. Pennsylvania. October 11, 1894.)

Intention to become a permanent resident.

The act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), is retrospective in so far as it applies to certificates of naturalization granted prior to its passage, but is not therefore void as depriving the person naturalized of vested rights, or subjecting him

to a penalty, since the Constitution contemplates that only those who intend to become permanent residents shall be naturalized or retain their citizenship, section 1 of the fourteenth amendment providing that "All persons born or naturalized in the United States and *subject to the jurisdiction thereof* are citizens of the United States and of the states wherein they reside."

U. S. v. Ellis, 185 Fed., 546. (Circuit Court, E. D. Louisiana, New Orleans Division. March 3, 1911.)

Same—Fraud.

Where an alien admitted to citizenship under Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1329), providing that only those persons possessing the necessary qualifications and intending *bona fide* to become citizens could be naturalized, did not in good faith intend to become a permanent citizen, and made his oath with a mental reservation to that effect, he is guilty of fraud in procuring the decree, and the certificate of citizenship may be canceled under the act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. St. Supp. 1909, p. 485), authorizing the cancellation of certificates of naturalization on the ground of fraud.

U. S. v. Ellis, 185 Fed., 546. (Circuit Court, E. D. Louisiana, New Orleans Division. March 3, 1911.)

SAILORS.

Residence.

The knowledge of the witnesses to a petition for naturalization filed under the act of June 29, 1906, c. 3592, Sec. 4, subd. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 422), who testify to the residence of the applicant in the state and the United States for the required period, need only be appropriate to the applicant's employment, and where he served for a portion of the time in the United States Navy, their testimony that he resided at a certain place prior to his enlistment and that he returned there at intervals during his service in the navy and after his discharge, meets the requirements of the statute.

In re Schneider, 164 Fed., 335. (Circuit Court, S. D. New York. October 2, 1908.)

Continuous residence.

The act of June 29, 1906, c. 3592, Sec. 4, subd. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 422), which requires that it shall be made to appear to the satisfaction of the court admitting an alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state or territory where such court is at the time held one year at least, the word "continuously" is not to be construed literally, the word "residence" being used in the sense of domicile, and a sailor who has acquired a

domicile does not abandon it by going to sea in the course of his employment.

In re Schneider, 164 Fed., 335. (Circuit Court, S. D. New York. October 2, 1908.)

Posting notice.

There is no repugnance between the act of July 26, 1894, c. 165, 28 Stat. 124 (U. S. Comp. St. 1901, p. 1332), providing for the naturalization of any alien who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, without any previous declaration of intention of becoming a citizen of the United States upon proof of good moral character and honorable discharge from the United States Navy or Marine Corps, and the act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), providing for a uniform rule for the naturalization of aliens throughout the United States, and the provision in the latter act requiring notice of a petition for naturalization to be posted for ninety days prior to the final hearing thereon is applicable to petitions filed under the act of July 26, 1894.

U. S. v. Peterson, 182 Fed., 289. (Circuit Court of Appeals, Eighth Circuit. October 11, 1910.)

Japanese sailors not eligible to naturalization.

An alien of the Japanese race is not eligible to naturalization under the provisions of the Act of Congress of July 26, 1894, 28 Stat. 124, c. 165 (U. S. Comp. St., 1901, p. 1332).

Bessho v. U. S., 178 Fed., 245. (Circuit Court of Appeals, Fourth Circuit. February 1, 1910.)

SEAMEN.

Certificate of discharge and good conduct.

An alien who after declaring his intention to become a citizen of the United States shall have served three years on board a merchant vessel of the United States, coastwise or other, may, on production of his certificate of discharge and good conduct during that time, be admitted to citizenship under Rev. Stat. 2174 (U. S. Comp. St. 1901, p. 1334); and such certificate of discharge and good conduct may be made by either a master or shipping commissioner.

In re Lind, 192 Fed., 209. (Circuit Court, N. D. California. December 1, 1911.)

Same—Declaration of Intention.

Rev. Stat. Sec. 2174 (U. S. Comp. St. 1901, p. 1334), which provides that every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted as a citizen of the United States, applies to seamen serving on American vessels engaged in trade on the Great Lakes; and where the

petitioner for naturalization, a seaman, presents a declaration of intention made April 15, 1907, and five certificates of discharge made and signed by masters of American vessels showing service on lake-going steamers for a period subsequent to the date of his declaration of intention aggregating three years and nineteen days, and good conduct during that time, they are sufficient.[1]

In re Sutherland, 197 Fed., 841. (District Court, N. D. Ohio, E. D. March 28, 1912.)

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[1] "Bearing in mind on June 22, 1874, the first revision of the general statutes was adopted by Congress (Revised Statutes 1874), and in that revision Section 29 of the Act of 1872 was taken therefrom and made a part of the title on 'Naturalization,' as Section 2174 (R. S. tit. 30, 'Naturalization'), by the same revision all other provisions of the Act of 1872 were carried on into the Revised Statutes as part of Title 53, 'Merchant Seamen.' The effect of this revision was to repeal the Act of 1872 as it existed at the date of the Act of 1874. The act of revision (Rev. Stat., Sec. 5596 [U. S. Comp. St., 1901, p. 3750]), provided that all acts of Congress passed prior to the first day of December, 1873, 'any portion of which is embraced in any section of said revision, is hereby repealed, and the sections applicable thereto shall be in force in lieu thereof.' As a result of this legislation, Section 2174 became and has since remained a substantive feature of the naturalization laws, and, as no such restriction as that made by the act of 1874 is to be found in such revision, the section is subject only to such limitation as is to be gathered from its own terms."

SOLDIERS.

Verification of petition for naturalization.

The petition for naturalization of an honorably discharged United States soldier under Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331), need not be verified by two witnesses, as provided by the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), the phrase "as now provided by law," contained in Sec. 2166, having reference to statutes in existence at the time of its enactment.

In re McNabb, 175 Fed., 511. (District Court, D. Oregon. December 6, 1909.)

Degree of proof.

The naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), does not affect the provisions of Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. Supp. 1901, p. 1331), requiring proof of residence and good moral character "as now provided by law," and an alien who is an honorably discharged soldier of the United States may be admitted a citizen thereunder with the degree of proof required by Sec. 2165 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1330).[1]

In re Loftus, 165 Fed., 1002. (Circuit Court, S. D. New York. December 14, 1908.)

Need not prove one year's residence in state—Depositions.

An honorably discharged United States soldier applying for naturalization under Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331), need not prove one year's residence in the state in which the petition is filed; and proof of residence in the United States for one year prior to his application may be made by deposition, Sec. 10 of the naturalization act of June 29, 1906, c. 3592, 34 Stat. 599 (U. S. Comp. St. Supp. 1909, p. 482), being broad enough to allow depositions to be taken outside of the state whenever it is essential to prove residence beyond the state.

In re McNabb, 175 Fed. 511. (District Court, D. Oregon. December 6, 1909.)

A Japanese soldier is not eligible to naturalization.

Under the provisions of 2169 Rev. Stat., as amended in 1875 (U. S. Comp. St. 1901, p. 1331), a member of the Japanese race is ineligible to naturalization as a citizen of the United States; and the fact that he enlisted as a soldier in the regular army of the United States and was honorably discharged therefrom would not entitle him to the benefits of Rev. Stat. 2166 (U. S. Comp. St. 1901, p. 1331), providing for the naturalization of honorably discharged members of the United States Army.

In re Buntaro Kumagai, 163 Fed., 922. (District Court, W. D. Washington, N. D. September 3, 1908.)

Widow of soldier must make declaration of intention.

The act of June 29, 1906, c. 3592, Sec. 4, subd. 6, 34 Stat. 598 (U. S. Comp. St. Supp. 1907, p. 422), providing that when any alien who has declared his intention to become a citizen of the United States dies before he is actually nat-

uralized the widow and minor children of such alien may, by complying with the other provisions of this act, be naturalized without making any declaration, does not authorize the naturalization, without previous declaration of intention, of the widow of a deceased alien who had never made declaration of his intention, but who was an honorably discharged soldier and entitled to admission under Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331).

U. S. v. Meyer, 170 Fed., 983. (District Court, E. D. Washington, S. D. May 27, 1909.)

Sec. 2166 Rev. Stat. U. S. not repealed.

Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331), providing for the naturalization of honorably discharged United States soldiers without a previous declaration of intention, was not repealed by Act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420).

U. S. v. Meyer, 170 Fed., 983. (District Court, E. D. Washington, S. D. May 27, 1909.)

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[1] "The section does not say that the proof of residence and character shall be as provided by law, or as now or hereafter provided by law, but as now provided by law. Effect should be given to the word 'now' if possible, and this can be done by treating the law existing in 1862 upon these points as incorporated under Section 2166, notwithstanding the fact that the general naturalization act of 1802, of which they were a part, has been repealed. All the other provisions of the Act of 1906, not being otherwise expressly regulated in the section, will be applicable to honorably discharged soldiers, viz.: the form and contents of the petition, the oath in open court, the public notice of the petition and hearing on a stated day, not less than ninety days after filing, the exclusion of anarchists and polygamists, etc."

STATUTES.

Constitutionality.

The naturalization act of June 29, 1906, c. 3592, 34 Stat. 596, 601, is not unconstitutional as an exercise of judicial power by the legislature; nor is it, because retrospective, an assumption of judicial powers by the legislature.

Johannessen v. United States, 32 S. Ct., 613, 225 U. S., 227, 56 L. Ed., 1066. (No. 230. Submitted April 22, 1912. Decided May 27, 1912.)

Construction.

While the naturalization laws should be liberally construed to enable those aliens who are entitled to citizenship to acquire it, the prerequisites prescribed by law in plain and unambiguous language cannot be dispensed with.

Ex parte Lange, 197 Fed., 769. (District Court, E. D. Missouri, E. D. July 22, 1912.)

Same—Statutes in the nature of a franchise.

A statute which grants a right or privilege in the nature of a franchise, where any ambiguity arises, that construction should be indulged which is most favorable to the person or class for whose benefit the grant was made.

In re Polsson, 159 Fed., 283. (Circuit Court, N. D. California. February 27, 1908.)

Same—Uniformity.

Naturalization is a matter of statute, which is of uniform application, and should have uniform construction throughout all the states.

In re Rousos, 119 N. Y. Supp., 34. (Supreme Court, Special term, Monroe County. September 28, 1909.)

Same—Words and phrases, popular sense, technical meaning.

In construing statutes words and phrases are to be assumed to have been used in their popular sense, if they have not acquired a technical meaning.

In re Ellis, 179 Fed., 1002. (District Court, D. Oregon. July 11, 1910.)

Same—Naturalization statutes, not in derogation of common right.

The right of aliens to acquire citizenship is statutory, and not in derogation of common right, hence the statutes are not to be strictly construed against the United States and in favor of the one seeking citizenship.

U. S. ex rel. De Rienzo v. Rodgers, U. S. Com'r of Immigration, et al., 185 Fed., 334. (Circuit Court of Appeals, Third Circuit. April 12, 1911.)

Naturalization is not a right but a privilege.

Citizenship in the United States is not a right but a privilege, and can only be granted by the courts in accordance with the laws enacted by Congress.

In re Buntaro Kumagai, 163 Fed., 922. (District Court, W. D. Washington, N. D. September 3, 1908.)

The naturalization laws apply only to aliens.

The naturalization laws of the United States apply only to aliens.

Dicta In re Alverto, 198 Fed., 688. (District Court, E. D. Pa. September 24, 1912.)

Same.

The naturalization laws of the United States apply only to aliens, and not to citizens, hence an alien who has been naturalized by a court of competent jurisdiction, and therefore ceased to be an alien, but who is unable to prove his citizenship by reason of the loss of his certificate and the destruction of the records of the court in which he was naturalized, is not entitled to renaturalization in order that he may have evidence of his citizenship, his remedy being by proceeding in that court to restore the record.

In re Buck, 204 Fed., 701. (District Court, E. D. Arkansas, E. D. May 6, 1913.)

Directory provisions, judgments not void for non-compliance with.

The provisions of the act of June 29, 1906, c. 3592, Sec. 4, Subd. 2, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), requiring a petition for naturalization to be filed in duplicate, is directory, and the failure to so file the petition does not render nugatory the judgment of the court admitting the applicant to citizenship.

U. S. v. Stoller, 180 Fed., 910. (District Court, E. D. Washington, E. D. July 8, 1910.)

Naturalization laws are not ex post facto.

An alien has no moral nor constitutional right to retain the privilege of citizenship if, by false evidence or the like, an imposition has been practiced on the court, and an act providing for the cancellation of certificates of naturalization imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct but simply deprives him of his ill-gotten privileges, and is not an *ex post facto* law within the prohibition of Art. I, Sec. 9 of the Constitution.

Johannessen v. United States, 32 S. Ct., 613, 225 U. S., 227, 56 L. Ed., 1066. (No. 230. Submitted April 22, 1912. Decided May 27, 1912.)

Retrospective provisions of the naturalization laws.

The prohibition of *ex post facto* laws contained in Art. I, Sec. 9 of the United States Constitution is confined to laws respecting criminal punishments, and has no relation to the retrospective provisions of the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596, 601.

Johannessen v. United States, 32 S. Ct., 613, 225 U. S., 227, 56 L. Ed., 1066. (No. 230. Submitted April 22, 1912. Decided May 27, 1912.)

Repeal by implication.

A statute which is repugnant or inconsistent with a later act of Congress is repealed by implication, although not mentioned therein.

U. S. v. Balsara, 180 Fed., 694. (Circuit Court of Appeals, Second Circuit. July 1, 1910.)

Repeal—Sec. 2166 Rev. Stat. U. S.

Sec. 2166 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1331), providing for the naturalization of honorably discharged United States soldiers without a previous declaration of intention, was not repealed by act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420).

U. S. v. Meyer, 170 Fed., 983. (District Court, E. D. Washington, S. D. May 27, 1909.)

Same—Sec. 2169 Rev. Stat. U. S.

The naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), did not repeal by implication Sec. 2169 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1333), limiting United States citizenship by naturalization to "aliens being free white persons, and to aliens of African nativity, and to persons of African descent."

U. S. v. Balsara, 180 Fed., 694. (Circuit Court of Appeals, Second Circuit. July 1, 1910,)

Same.

Sec. 2169 U. S. Revised Statutes was not repealed by the act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), and is applicable to Sec. 30 of that act.

In re Alverto, 198 Fed., 688. (District Court, E. D. Pa. September 24, 1912.)

UNITED STATES ATTORNEY.

Duty to prosecute cancellation proceedings.

The naturalization act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601 (U. S. Comp. Supp. 1907, p. 427), imposes upon the United States attorney, and not upon the Bureau of Immigration and Naturalization, or its representatives, the duty of prosecuting proceedings to cancel certificates of naturalization.

U. S. v. Anderson, 169 Fed., 201. (District Court, D. Idaho, C. D. April 1, 1909.)

Duty to state objections and support by argument.

Inasmuch as the naturalization act of June 29, 1906, c. 3592, Sec. 11, 34 Stat. 599 (U. S. Comp. St. Supp. 1909, p. 482), provides that the United States shall have the right to appear in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and may call witnesses, produce evidence, and be heard in opposition to the granting of any petition for naturalization, the court will ordinarily admit the petitioner to citizenship in the absence of declared opposition by the United States; hence, it is the duty of the United States

attorney to state his objections and to support the same by argument.

In re Mudarri, 176 Fed., 465. (Circuit Court, D. Massachusetts. January 8, 1910.)

UNITED STATES CONSTITUTION.

Knowledge of principles of Constitution.

The court will not admit an alien to citizenship without being satisfied that he has at least some comprehension of what the Constitution is, and of the principles which it affirms.

In re Bodek, 63 Fed., 815. (Circuit Court, E. D. Pennsylvania. October 11, 1894.)

Attachment to principles of Constitution.

An alien who is law-abiding, industrious and of good moral character is entitled to naturalization, notwithstanding his inability to undergo an examination on Constitutional law, where by his daily walk he has illustrated and emphasized his attachment to the principles of the Constitution.

In re Rodriguez, 81 Fed., 337. (District Court, W. D. Texas. May 3, 1897.)

Same.

An applicant for citizenship, who, in violation of the state Sunday closing act, keeps his saloon open Sundays, does not show a want of the requisite good moral character required by the naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), where

it is shown that the law has never been enforced because of adverse public sentiment, and he is willing to comply with the law if insisted upon by the proper authorities. (U. S. v. Hrasky, *infra,* distinguished.)

In re Hopp, 179 Fed., 651. (District Court, E. D. Wisconsin. May 28, 1910.)

Same.

An alien who is in the saloon business, and had known for more than two years that the laws of the state required the closing of saloons on Sunday, but nevertheless regularly kept the back door of his saloon open on that day, and who states that although he should take the oath to support the United States Constitution and laws, would continue to do so, is not eligible to naturalization under the provisions of the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), which provides that it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

U. S. v. Hrasky, 88 N. E. 1031, 240 Ill., 560. (Supreme Court of Illinois. April, 1909.)

Same.

An alien who filed a petition for naturalization, verified by a saloon keeper, in which he stated that he was a clerk, and it is shown at the final hearing thereon that he

was a bartender in the witness' saloon, and had within the past five years been found guilty of violating the liquor laws of the State of Kansas, and was arrested for selling liquor in violation of an injunction and sentenced to 30 days in jail and to pay a fine of $100, following which conviction he was paroled, and that the parole had terminated, not only exhibited a willful disregard of the laws of the state, but of the orders of the court, and is not well disposed to the good order and happiness flowing from attachment to the principles if the Constitution of the United States, and is not entitled to naturalization under the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 529), requiring that during the five years prior to the filing of the petition the applicant shall have behaved as a man of good moral character, attached to the principles of the Constitution and well disposed to the good order and happiness of the same.

In re Trum, 199 Fed., 361. (District Court, W. D. Missouri, W. D. October 2, 1912.)

Same—Socialism.

Attachment to the principles of the Constitution of the United States cannot be presumed from the fact that the applicant is an industrious, law-abiding man, and a person who believes in the doctrines of socialism, the principles of which are directly at war with and antagonistical to the principles of the Constitution, notably property rights, cannot be said to be "well disposed to the good order and happiness" of the United States and attached to the principles of the Constitution.

In re Sauer, 81 Fed., 355. (District Court of Texas, Uvalde County. September Term, 1891.)

Same.

An alien who, for the purpose of securing naturalization as a citizen of the United States under the act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), intentionally represented to the court at the final hearing of the application that "he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same," on a suit to cancel his certificate of naturalization brought by the United States upon the ground of fraud, in that such representations were untrue, admitted that he advocates the common ownership of all land, buildings and industrial institutions, to be accomplished by use of the power of the ballot, and that when that object shall have been attained the political government of the country will be entirely abrogated, as there will be no use for it, and that such beliefs were entertained by him at and previous to his admission to citizenship. *Held,* that the certificate of naturalization was procured through fraud, and that the United States is entitled to its cancellation.[1]

U. S. v. Olsson, 196 Fed., 562. (District Court, W. D. Washington, S. D. May 11, 1912.)

Knowledge of and attachment to principles of Constitution.

A petitioner for naturalization who is unaware of the existence of the Constitution of the United States, the reason for its adoption, the organization of the government, or of the methods provided for the enactment and enforcement of the laws, and the rights, prerogatives and duties of citizenship, and who, instead of taking advantage of time given him to devote to a study of the subjects, takes direct issue with the court and stoutly asserts that he is qualified,

notwithstanding the court's finding to the contrary, is not entitled to admission to citizenship.[2]

In re Meakins, 164 Fed., 334. (District Court, E. D. Washington, E. D. September 4, 1908.)

Knowledge of the U. S. Constitution and form of government —Materiality.

(Syllabus by the court.)

While great caution should be exercised in the examination of applicants for citizenship, yet no hard and fast rule can be laid down. Each case must depend largely upon its special facts. The practical test is whether the evidence, considered as a whole, justifies the conclusion that the applicant will make a good citizen. An applicant otherwise entitled to citizenship should not necessarily be denied the right because the evidence shows that he has no accurate knowledge of the federal Constitution and form of government.

State ex rel. United States v. District Court of Seventeenth Dist., et al., 120 N. W., 898, 107 Minn., 444. (Supreme Court of Minnesota. April 23, 1909.)

Same.

A Syrian who came to the United States eleven years before and was a Christian, but could not read or write English, spoke and understood English very imperfectly, did not understand the questions relating to the manner and method of government in America, or the responsibilities of a citizen, and answered affirmatively the questions whether he was a polygamist or a disbeliever in organized government, and who desired to be naturalized so

as to bring his wife and children into the United States, was not qualified to be admitted a citizen of the United States, irrespective of whether he was a free white person within the provisions of the Act Cong. March 26, 1790, c. 3, 1 Stat., 103, as amended by the Act July 14, 1870, c. 254, 16 Stat., 254.

Ex Parte Shahid, 205 Fed., 812. (District Court, E. D. South Carolina. June 24, 1913.)

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[1] "The people of this country ordained the Constitution of the United States, to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty to themselves and their posterity, and thereby established a national government, to endure permanently. The notion that citizens of this country may absolve themselves from allegiance to the Constitution of the United States, otherwise than by expatriation, is a dangerous heresy. The nation generously and cordially admits to its citizenship aliens having the qualifications prescribed by law, but recognizing the principle of natural law, called the law of self-preservation, it restricts the privilege of becoming naturalized to those whose sentiments are compatible with genuine allegiance to the existing government as defined by the oath which they are required to take. Those who believe in and propagate crude theories hostile to the Constitution are barred."

[2] "He cannot be attached to principles of which he is entirely ignorant. His disposition, manifested in open court, also shows that he is not well-disposed to the good order and happiness of the country. He appears in an attitude of defiance, as one who is entitled to demand admission, regardless of qualifications."

UNITED STATES NATURALIZATION EXAMINER.

False answers by petitioner during investigation.

Under the act of June 29, 1906, c. 3592, Sec. 4, Subd. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1911, p. 531), which provides that it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, an alien whose petition for naturalization was denied because he falsely answered inquiries made by the Chief Naturalization Examiner during an investigation of the application, will be denied naturalization on a subsequent petition filed within five years after the date of the offense, as he cannot be said to have behaved as a man of good moral character.

In re Talarico, 197 Fed., 1018. (District Court, W. D. Pennsylvania. July 6, 1912.)

WHITE PERSONS.

Armenians are white persons.

An Armenian, born in Asiatic Turkey, is a "free white person" within the meaning of Sec. 2169 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1333), and as such eligible to naturalization.

In re Halladjian, et al., 174 Fed., 834. (Circuit Court, D. Massachusetts. December 24, 1909.)

Chinese, half breeds, are not white persons.

An alien whose father was an Englishman and whose mother was one-half Chinese and one-half Japanese is not a free white person within the meaning of Sec. 2169 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1333), and therefore not entitled to naturalization.

In re Knight, 171 Fed., 299. (District Court, E. D. New York. July 13, 1909.)

Filipinos are not white persons—Navy.

A citizen of the Philippine Islands, three-fourths brown and one-fourth white, who has served seven years continuously as an enlisted man in the United States Navy and been honorably discharged under his first enlistment, is not eligible to naturalization under the provisions of the Act of Congress of July 26, 1894 (28 Stat. 124, c. 165 [U. S. Comp.

St. 1901, p. 1332]), being debarred by Sec. 2169, Revised Statutes, as amended in 1875 (U. S. Comp. St. 1901, p. 1333).

In re Alverto, 198 Fed., 188. (District Court, E. D. Pa. September 24, 1912.)

Indians are not white persons.

Under Rev. St. 2169 (U. S. Comp. St. 1901, p. 1333), providing that a free white person or an alien of African nativity or of African descent may be admitted to citizenship, an Indian born in British Columbia will not be admitted to citizenship by naturalization in the United States.

In re Burton, 1 Alaska, 111 (1900).

Japanese are not white persons.

A native of Japan is not a "white person" or an "alien of African nativity or of African descent" within the meaning of Rev. Stat. U. S., Sec. 2169 (U. S. Comp. St. 1901, p. 1333), and therefore not entitled to become a citizen of the United States by naturalization.

In re Yamashita, 70 Pac., 482, 30 Wash., 234, 59 L. R. A., 671. (Supreme Court of Washington. October 22, 1902.)

Same.

A native of Japan, of the Mongolian race, not being a "white person" within the meaning of Sec. 2169 Rev. Stat. U. S. (Comp. St. U. S. 1901, p. 1333), is not entitled to naturalization.

In re Saito, 62 Fed., 126. (Circuit Court, D. Massachusetts. June 24, 1894.)

Same—Marines—Sailors.

An alien of the Japanese race is not eligible to naturalization under the provisions of the Act of Congress of July 26, 1894 (28 Stat. 124, c. 165 [U. S. Comp. St. 1901, p. 1332]).

Bessho v. U. S., 178 Fed., 245. (Circuit Court of Appeals, Fourth Circuit. February 1, 1910.)

Same—Soldiers.

Under the provisions of Sec. 2169 Rev. Stat., as amended in 1875 (U. S. Comp. St. 1901, p. 1333), a member of the Japanese race is ineligible to naturalization as a citizen of the United States; and the fact that he enlisted as a soldier in the regular army of the United States and was honorably discharged therefrom would not entitle him to the benefits of Rev. Stat. 2166 (U. S. Comp. St. 1901, p. 1331), providing for the naturalization of honorably discharged members of the United States Army.

In re Buntaro Kumagai, 163 Fed., 922. (District Court, W. D. Washington, N. D. September 3, 1908.)

Japanese, half breeds, are not white persons.

An alien born at a place in Japan, under the dominion of Germany, of which country he is a subject, whose father is a German, but whose mother is a Japanese woman, is not eligible to naturalization under the laws enacted by Congress authorizing only those aliens to become naturalized citizens of the United States who are white persons, or Africans, or of African descent.

In re Young, 195 Fed., 645. (District Court, W. D. Washington, N. D. April 24, 1912.)

Same.

An alien whose father was a German subject, but whose mother was a Japanese woman, is not a "white" person within the meaning of Sec. 2169 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1333), and therefore not eligible to naturalization.

In re Young (rehearing), 198 Fed., 715. (District Court, W. D. Washington, N. D. August 15, 1912.)

Same.

The right to be naturalized as a citizen of the United States depends on parentage and blood, and not upon nationality or status; hence, a German subject, born of a German father, but whose mother was a Japanese woman, is not eligible to naturalization under the laws enacted by Congress authorizing only those aliens to become naturalized citizens of the United States who are white persons or Africans, or of African descent.

In re Young, 195 Fed., 645. (District Court, W. D. Washington, N. D. April 24, 1912.)

Mexicans are white persons—Ethnology.

A native Mexican is eligible to naturalization as a citizen of the United States, without regard to his status viewed solely from the standpoint of the ethnologist.

In re Rodriguez, 81 Fed., 337. (District Court, W. D. Texas. May 3, 1897.)

Parsee are white persons.

A Parsee, from the neighborhood of Bombay, India, is a "white person" within the meaning of Sec. 2169 Rev. Stat.

U. S. (U. S. Comp. St. 1901, p. 1333), and as such is eligible to naturalization as a citizen of the United States, Sec. 2169 being applicable to and excluding from citizenship by naturalization aliens of the yellow, red and brown races, as distinct from the white or caucasian race.

U. S. v. Balsara, 180 Fed., 694. (Circuit Court of Appeals, Second Circuit. July 1, 1910.)

Syrians are white persons.

A Syrian who is a native of Palestine, and a Maronite, is a white person within the meaning of Sec. 2169 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1333), and as such is entitled to naturalization as a citizen of the United States, the word "white" being used in its popular sense as referring to members of the white or caucasian race.

In re Ellis, 179 Fed., 1002. (District Court, D. Oregon. July 11, 1910.)

Same.

Sec. 2169 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1333), which limits the privilege of United States citizenship by naturalization to "free white persons," etc., refers to race rather than color; and a Syrian who comes within the classification of the white or caucasian race is eligible to naturalization.

In re Najour, 174 Fed., 735. (Circuit Court, N. D. Georgia. December 1, 1909.)

Same.

An alien of the Syrian race is to be classed as of the caucasian or white race, and as such is eligible to naturalization

under Rev. Stat. U. S. 2169 (U. S. Comp. St. 1901, p. 1333), limiting the application of the naturalization laws to aliens who are free white persons, etc.

In re Mudarri, 176 Fed., 465. (Circuit Court, D. Massachusetts. January 8, 1910.)

Sec. 2169 Rev. Stat. U. S. not repealed.

The naturalization act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), did not repeal by implication Sec. 2169 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1333), limiting United States citizenship by naturalization to "aliens being free white persons, and to aliens of African nativity, and to persons of African descent."

U. S. v. Balsara, 180 Fed., 694. (Circuit Court of Appeals, Second Circuit. July 1, 1910.)

WIFE.

Wife of alien husband not eligible to naturalization.

The wife of an alien, although resident in the United States and otherwise qualified, cannot become a citizen of the United States by naturalization.

In re Rionda, 164 Fed., 368. (District Court, S. D. New York. June 16, 1908.)

Same—Expatriation.

Inasmuch as an American woman who marries a foreigner takes the nationality of her husband under the expatriation act of March 2, 1907, c. 2534, 34 Stat. 1228 (U. S. Comp. St. Supp. 1909, p. 438), the alien wife of an alien man cannot, on her own petition, become a citizen of the United States by naturalization.

U. S. v. Cohen, 179 Fed., 834. (Circuit Court of Appeals, Second Circuit. June 14, 1910.)

Expatriation—Witness on husband's petition—Disqualification.

An American woman who marries a foreigner thereby takes the nationality of her husband under the express terms of the act of March 2, 1907, c. 2534, Sec. 4, 34 Stat. 1228 (U. S. Comp. St. Supp. 1907, p. 381), relating to the

expatriation of citizens, and she is therefore incompetent to act as a witness on a petition for naturalization filed by her husband under the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), which requires such witnesses to be citizens of the United States.

In re Mortorana, 159 Fed., 1010. (District Court, E. D. Pennsylvania. March 26, 1908.)

Citizenship by Birth not lost by Marriage to an Alien.

A woman who is a citizen of the United States by birth does not lose that citizenship by marriage to an alien, at least so long as she continues to reside in the United States.

Wallenburg v. Missouri Pac. Ry. Co., 149 Fed., 217. (Circuit Court, D. Nebraska. February 14, 1908.)

Naturalization by Marriage.

A wife who becomes a citizen of the United States upon the naturalization of her husband has the right to take and hold real estate.

Criswell v. Noble, et al., 113 N. Y. Supp., 954, 147 N. Y. St. Rep., 61 Misc. Rep., 483. (Supreme Court, Special Term, Niagara County. December 19, 1908.)

Same.

An alien female who lawfully entered the United States for a lawful purpose and afterwards married a citizen of the United States, became a United States citizen by virtue of such marriage under the provisions of Rev. Stat. U. S., Sec. 1994 (U. S. Comp. St. 1901, p. 1268).

Sprung v. Morton; Bloom v. Morton (two cases), 182 Fed., 330. (District Court, E. D. Virginia. December 31, 1909.)

Same.

When the husband of an alien woman becomes naturalized, she, as well as her infant son, dwelling in the United States, likewise become citizens.

U. S. ex rel. Fisher v. Rodgers, U. S. Immigration Com'r, et al., 144 Feb., 711. (District Court, E. D. Pennsylvania. April 5, 1906.)

Same—Residence—Immigration.

It was not the intention of Congress in enacting Sec. 1994 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1268), providing that "any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized shall be deemed a citizen," to confer citizenship upon aliens excluded by the immigration laws from admission to the United States.

In re Rustigian, 165 Fed., 980. (Circuit Court, D. Rhode Island. December 22, 1908.)

Same.

An alien woman who marries a United States citizen and thereby herself becomes a citizen under Rev. Stat. 1994 (U. S. Comp. St. 1901, p. 1268), cannot be refused admission to the United States under the immigration laws, although she had never been in this country and would be inadmissible if an alien.

In re Nicola (two cases), 184 Fed., 322. (Circuit Court of Appeals, Second Circuit. January 16, 1911.)

Same.

Where a woman subject of the Turkish Empire married a citizen of the United States, she thereby herself became a citizen, entitled to admission to the United States as such, regardless of the fact that upon reaching the United States she was suffering from a disease which would exclude her as an alien.

Nicola v. Williams, 173 Fed., 626. (District Court, S. D. New York. October 29, 1909.)

Same.

Under the law of Holland and of the United States the citizenship of the wife follows that of the husband, hence a woman subject of Holland who married an alien in New York became a citizen of the United States by virtue of his subsequent naturalization; and the fact that she left her husband prior to his admission to citizenship and went back to Holland with a paramour with whom she had been living would not affect her right to enter the United States as a citizen.

Gendering v. Williams, 173 Fed., 626. (District Court, S. D. New York. October 29, 1909.)

Same.

The acquirement of United States citizenship by the husband of a woman resident abroad and not entitled to admission to the United States under the immigration laws because of a contagious disease, would not render her admissible as a citizen, Sec. 1994 Rev. Stat. U. S. (U. S. Comp. St. 1901, p. 1268), providing that any woman married to a citizen of the United States who might herself

be lawfully naturalized shall be deemed a citizen, having reference to a woman within the United States who in her own capacity would be entitled to naturalization.

In re Rustigian, 165 Fed., 980. (Circuit Court. D. Rhode Island. December 22, 1908.)

WITNESSES.

Witnesses must be United States citizens.

The act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. 1907, p. 420), provides that a petition for naturalization filed thereunder shall be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, stating certain facts relating to the petitioner, and a petition not so verified by at least two persons who are citizens is not merely voidable, but void, and cannot be amended.[1]

U. S. v. Martorana, 171 Fed., 397. (Circuit Court of Appeals, Third Circuit, May 25, 1909.)

In re Martorana, 159 Fed., 1010, reversed. (Post, p. 162.)

Same.

A petition for naturalization not verified by the affidavits of two citizens of the United States must be dismissed, but without prejudice to the right of the petitioner to file a new petition properly verified.

In re Wolf, 188 Fed., 519. (Circuit Court, M. D. Tennessee, Nashville Division. April 13, 1911.)

Wife of Petitioner—Incompetency.

An American woman who marries a foreigner thereby takes the nationality of her husband under the express

terms of the act of March 2, 1907, c. 2534, Sec. 4, 34 Stat. 1228 (U. S. Comp. St. Supp. 1907, p. 381), relating to the expatriation of citizens, and she is therefore incompetent to act as a witness on a petition for naturalization filed by her husband under the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), which requires such witnesses to be citizens of the United States.

In re Martorana, 159 Fed., 1010. (District Court, E. D. Pennsylvania. March 26, 1908.)

Witnesses must be competent—Five years' acquaintance—Illegal naturalization.

A petition for naturalization verified by two witnesses, one of whom admitted at the final hearing thereon that he had not known the petitioner for five years antedating the date of filing the petition, and the other witness, who was a naturalized citizen, admitted that he had surrendered his certificate of naturalization for cancellation because procured in violation of law, is not verified as required by Sub-division 2 of Paragraph 2 of Section 4 of the naturalization act of June 29, 1906 (34 Stat. 596, c. 3592 [U. S. Comp. St. Supp. 1907, p. 421]), and is not sufficient.

In re Aprea, 158 Fed., 703. (Circuit Court, S. D. N. Y. February 26, 1908.)

Illegal naturalization—Disqualification.

A witness to a petition for naturalization who admitted at the final hearing thereon that his citizenship had been unlawfully obtained under the laws of the United States, and that he had surrendered the same for cancellation, is

disqualified from acting as a witness in a naturalization proceeding.

In re Aprea, 158 Fed., 703. (Circuit Court, S. D. N. Y. February 26, 1908.)

Five years' acquaintance prior to date of petition.

A witness to a petition for naturalization who admitted at the final hearing thereon that he had not known the petitioner for five years continuously immediately preceding the date of filing the petition, is not a qualified witness.

In re Aprea, 158 Fed., 703. (Circuit Court, S. D. N. Y. February 26, 1908.)

Same.

The act of June 29, 1906, c. 3592, par. 3, subd. 2, Sec. 4, 34 Stat. 597 (U. S. Comp. St. Supp. 1907, p. 421), requires that the vouchers to a petition for naturalization must be able to state that "they have personally known the applicant to be a resident of the United States for a period of at least five years continuously * * * immediately preceding the date of the filing of his petition," hence, a voucher who had not known the petitioner for a period of five years continuously immediately preceding the filing of the petition is disqualified, even though he had known the petitioner for five years prior to the final hearing on the petition.

In re Welsh, et al., 159 Fed., 1014. (Circuit Court, E. D. Pennsylvania. March 26, 1908.)

Same—Substitute witnesses.

Under the act of June 29, 1906, c. 3592, par. 3, subd. 2, Sec. 4, 34 Stat. 597 (U. S. Comp. St. Supp. 1907, p. 421),

which requires that "it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of the application he has resided continuously within the United States five years," etc., a substitute witness on a petition for naturalization who had not known the petitioner five years continuously immediately preceding the date of the filing of the petition is disqualified as a witness at the final hearing, even though the petition was verified by qualified witnesses and the substitute witness had known the petitioner for five years prior to the date of final hearing thereon.

In re Welsh, et al., 159 Fed., 1014. (Circuit Court, E. D. Pennsylvania. March 26, 1908.)

Number of witnesses.

While the affidavit of verifying witnesses to a petition for naturalization under the provisions of the naturalization act of June 29, 1906, c. 3592, Sec. 4, subd. 2, 34 Stat. 597 (U. S. Comp. St. Supp. 1909, p. 478), must show the requisite period of residence of the petitioner, such showing need not be made by the same witnesses as to the entire period, and so long as there are at least two credible witnesses testifying as to each fraction of such period so as to cover the whole, the requirement of the statute is satisfied.

In re Godlover, 181 Fed., 731. (Circuit Court, N. D. California. September 20, 1910.)

Competent witness substituted for one disqualified.

Where a petition for naturalization is defective in that one of the verifying witnesses is disqualified because not a citizen of the United States, it would be more orderly for

the clerk to refile the petition and give it a new consecutive number upon the records than to permit its amendment by the substitution of a competent witness and redating the witnesses' affidavit, but the absence of a filing indorsement or calendar entry by the clerk with reference to a petition which is actually filed, and upon which the clerk has acted, is immaterial, if the fact of filing sufficiently appears.

U. S. v. Erickson, 188 Fed., 747. (District Court, W. D. Michigan, S. D. September 28, 1910.)

Same.

A certificate of naturalization should not be canceled as having been illegally obtained where one of the verifying witnesses to the petition for naturalization was found to be disqualified because not a citizen of the United States and his name erased from the witnesses' affidavit and the name of a competent witness substituted and the affidavit redated as of the date of verification by the new witness, although no duplicate of the amended affidavit was forwarded to the Department of Commerce and Labor.

U. S. v. Erickson, 188 Fed., 747. (District Court, W. D. Michigan, S. D. September 28, 1910.)

Posting of names.

No allegation having been made that the clerk of the court did not post the names of the verifying witnesses to a petition for naturalization for 90 days prior to the hearing thereon, they are presumed to have been so posted.

U. S. v. Erickson, 188 Fed., 747. (District Court, W. D. Michigan, S. D. September 28, 1910.)

Same—Names of substitute witnesses need not be posted.

The two witnesses required to be produced by an alien in support of his petition for naturalization under the act of June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), need not be the persons who verified the petiton, nor need they be the persons whose names were posted in accordance with section 5 of the act, and upon a reasonable showing that the petitioner is unable to secure their attendance other witnesses may be summoned, and their names need not be posted for ninety days prior to the hearing on the petition.

In re Schatz, 161 Fed., 237. (Circuit Court, D. Oregon. April 7, 1908.)

Same.

Where a petition for naturalization is verified by the affidavits of two credible witnesses who are citizens of the United States, etc., as required by the act of June 29, 1906, c. 3592, Secs. 4, 5, 34 Stat. 596, 598 (U. S. Comp. St. Supp. 1909, pp. 478, 480), which further provides that at the final hearing on the petition the testimony of at least two credible witnesses, citizens of the United States, shall be required, and that immediately after the petition is filed the clerk shall post a notice thereof, and of the date, as nearly as may be, for the final hearing, and the names of the witnesses whom the applicant expects to summon in his behalf, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned, the witnesses at the final hearing are not required to be the same witnesses who verified the petition or whose names appear on the posted notice, and in case one or more of such witnesses cannot be produced, other witnesses may be sum-

moned and testify at the final hearing whose names have not been posted for ninety days.

U. S. v. Doyle, 175 Fed., 687. (Circuit Court of Appeals, Seventh Circuit. April 19, 1910.)

Same.

Where one of the verifying witnesses to a petition for naturalization filed under the act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), cannot be produced at the final hearing on the petition, a substitute witness may testify without postponing the hearing until his name can be posted for ninety days.

In re Neugebauer, 172 Fed., 943. (District Court, W. D. Pennsylvania. October 11, 1909.)

Same.

The act of June 29, 1906, c. 3592, Sec. 4, Subd. 2, Par. 2, and Sec. 5, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 478), requires that a petition for naturalization shall be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, respecting the qualification of the applicant, and provides that the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the application requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, and in case

such witnesses cannot be produced upon the final hearing other witnesses may be summoned. *Held,* that where one or more of the witnesses whose names have been posted cannot be produced on the final hearing of the petition, other witnesses may be summoned and testify without further posting.

U. S. v. Ojala, 182 Fed., 51. (Circuit Court of Appeals, Eighth Circuit. October 11, 1910.)

Same—Names of substitute witnesses must be posted ninety days.

Where an alien cannot produce one of the verifying witnesses to his petition for naturalization at the final hearing thereon, he may, under Sec. 5, act of June 29, 1906, c. 3592, 34 Stat. 598 (U. S. Comp. St. Supp. 1907, p. 423), summon another witness in his place, but the name of such substitute witness must be posted for 90 days prior to the final hearing on the petition, as required by Sec. 6 of that act.

In re O'Dea, 158 Fed., 703. (Circuit Court, S. D. New York. February 25, 1908.)

Same.

Under the act of June 29, 1906, c. 3592, Secs. 4-6, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), the posting of the names of witnesses to a petition for naturalization is a condition precedent to the qualification of the witnesses to testify at the final hearing thereon; and where one of such witnesses fails to qualify, or cannot be produced, a substitute witness cannot testify unless his name has been posted for the requisite 90 days.

U. S. v. Daly, 32 App. D. C., 525. (Court of Appeals, District of Columbia. February 2, 1909.)

Same—Competent witness substituted for one disqualified.

Under the act of June 29, 1906, c. 3592, par. 3, subd. 2, Sec. 4, 34 Stat. 596 (U. S. Comp. St. 1907, p. 420), which requires that the witnesses to a petition for naturalization must be able to state that "they have personally known the applicant to be a resident of the United States for a period of at least five years continuously * * * immediately preceding the date of the filing of his petition," a petition verified by witnesses who had not known the petitioner for five years continuously immediately preceding the filing of the petition may be amended by the substitution of witnesses who have known him for the required period, and the posting of their names, as required by law, before the final hearing.

In re Welsh, et al., 159 Fed., 1014. (Circuit Court, E. D. Pennsylvania. March 26, 1908.)

Same.

Under the act of June 29, 1906, c. 3592, Sec. 4, subd. 4 and subd. 2, par. 3, and Secs. 5, 6, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), requiring that a petition for naturalization shall be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, stating certain facts relating to the applicant, that the names of the witnesses whom the applicant expects to summon shall be posted ninety days before the final hearing on the petition, and if such witnesses cannot be produced at the final hearing other witnesses may be summoned, a petition verified by a person who is not a citizen, an honest mistake having been made as to the competency of the disqualified witness, may be amended by allowing the applicant to have the petition verified by a witness who is qualified and the reposting of the petition so amended

for ninety days as required by Section 6 of the act, after which it can be finally heard.

In re Martorana, 159 Fed., 1010. (District Court, E. D. Pennsylvania. March 26, 1908.) Reversed in U. S. v. Martorana, 171 Fed., 397 (C. C. A.), *supra.*

Personal knowledge, character, residence.

The naturalization act of June 29, 1906, c. 3592, Sec. 4, subd. 2, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), declares that an alien may be admitted to become a citizen of the United States in the following manner and not otherwise, and requires that a petition for naturalization shall be verified by at least two credible witnesses who shall state that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously * * * and that they each have personal knowledge that the petitioner is a person of good moral character and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States; and where the two verifying witnesses are the uncle and aunt of the petitioner, who came to this country before the petitioner was born, and who never saw or knew him personally until about two years previous to the filing of the petition, although they had learned, through correspondence from relatives and from the petitioner, that he had come to the United States and was residing at Philadelphia, they are unable to truthfully state that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and he cannot be admitted.[2]

In re Toomey, 111 N. Y. Supp., 600 and 145 N. Y. St. Rep. (Supreme Court, Special term, Erie County. February, 1908.)

Same—Navy.

The knowledge of witnesses to a petition for naturalization filed under the act of June 29, 1906, c. 3592, Sec. 4, subd. 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), who testify to the residence of the applicant in the state and the United States for the required period, need only be appropriate to the applicant's employment, and where he served for a portion of the time in the United States Navy, their testimony that he resided at a certain place prior to his enlistment and that he returned there at intervals during his service in the navy and after his discharge, meets the requirements of the statute.

In re Schneider, 164 Fed., 335. (Circuit Court, S. D. New York. October 2, 1908.)

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[1] "Admission to citizenship is wholly a subject of statutory law or treaty stipulation. Aside from affirmative legislation or treaty provision by the State or nation whose protection and privileges are sought by a foreigner, there is no inherent right in him to enjoy such protection or privileges and no obligation on its part to permit him to do so. Of necessity every state or nation must determine for itself who shall enjoy the rights of membership in the body politic of which it consists, and before a right to such enjoyment can be acquired by an alien all the prescribed conditions must be fully satisfied."

[2] "Information gained by correspondence from others, or even from the applicant, does not, in our opinion, meet the plain intent of the statute."

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